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APPENDIX

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E. ROBERT SEAWER, CLERK

IN THE  
Supreme Court of the United States  
Second Term, 1970-1971

No. 1292-70-75

MOOSE LODGE NO. 107, Appellant,

v.

K. LEROY IRVIS, et al.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE  
MIDDLE DISTRICT OF PENNSYLVANIA

FILED FEBRUARY 2, 1971  
JURISDICTION POSTPONED MARCH 22, 1971



IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1970

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No. 1292

MOOSE LODGE NO. 107, *Appellant*,

v.

K. LEROY IRVIS, *et al.*

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APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE  
MIDDLE DISTRICT OF PENNSYLVANIA

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## APPENDIX

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### 1. Relevant Docket Entries

March 25, 1969—Complaint filed, with request for three judge court.

March 28, 1969—Order requesting convening of three judge court.

April 15, 1969—Order of Chief Judge Hastie, C.A. 3, convening a three judge court.

April 28, 1969—Motion to dismiss of individual defendants Scott et al. filed.

May 2, 1969—Motion to dismiss of defendant Moose Lodge No. 107 filed.

September 2, 1969—Motions to dismiss argued.

September 22, 1969—Orders denying both motions to dismiss.

October 6, 1969—Answer of individual defendants Scott et al. filed.

October 20, 1969—Answer of defendant Moose Lodge No. 107 filed.

January 26, 1970—Stipulation of facts filed.

January 28, 1970—Plaintiff's motion for summary judgment filed.

March 11, 1970—Brief of Pennsylvania Liquor Control Board, Defendant, Contra Plaintiff's Motion for Summary Judgment, filed.



May 14, 1970—Motion for summary judgment argued.

May 22, 1970—Supplemental stipulation of facts filed.

October 8, 1970—Opinion of three judge court filed—“ \* \* \*

We therefore hold that the club license granted by the Liquor Control Board of the Commonwealth of Pennsylvania to the Moose Lodge No. 107 is invalid because it is in violation of the Equal Protection Clause of the Fourteenth Amendment of the federal Constitution. An appropriate form of decree may be submitted.”

November 13, 1970—Final decree entered.

December 3, 1970—Defendant Moose Lodge's motion to modify final decree filed.

December 14, 1970—Plaintiff's answer to motion to modify final decree filed.

January 4, 1971—Motion of defendant Moose Lodge for stay pending appeal filed.

January 4, 1971—Notice of appeal filed by defendant Moose Lodge.

January 5, 1971—Order denying motion of Moose Lodge to modify final decree.

January 8, 1971—Order staying final decree pending appeal until final disposition of cause by Supreme Court.

## 2. Complaint

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

CIVIL ACTION No. 69-107

(K. LEROY IRVIS, *Plaintiff*

v.

WILLIAM Z. SCOTT, Chairman; EDWIN WINNER, member and  
GEORGE R. BORTZ, member, LIQUOR CONTROL BOARD,  
COMMONWEALTH OF PENNSYLVANIA

and

MOOSE LODGE No. 107,  
Harrisburg, Pennsylvania, *Defendants*

## COMPLAINT

1. This action arises under the Fourteenth Amendment to the Constitution of the United States, Section 1, as hereinafter more fully appears. The matter in controversy exceeds, exclusive of interest and costs, the sum of Ten Thousand (\$10,000) Dollars. This action also is brought to redress the deprivation by Defendants, their agents, employees and others acting in concert with them, under State law, statute, ordinance, regulation, custom or usage of Plaintiff's right to the equal protection of the laws, secured by the Fourteenth Amendment to the Constitution of the United States. This action is authorized by Title 42 U.S.C. § 1983, and the jurisdiction of this Court is invoked under Title 28 U.S.C. § 1331 and § 1343(3) and (4).

2. Defendants Scott, Winner and Bortz are the chairman and members of the Pennsylvania Liquor Control Board, an independent administrative board of the Commonwealth of Pennsylvania. They are, collectively, as chairman and members of such Board, charged with and do exercise comprehensive supervisory power over the administration and

conduct of the Pennsylvania alcoholic beverage control system, all in accordance with the provisions of the Pennsylvania "Liquor Code," Act of April 12, 1951, P.L. 90, as amended, Title 47, Purdon's Pa. Stat. Ann. §§ 1-101 to 9-902. Said Defendants are referred to hereinafter as Defendant Board.

3. Pursuant to the power exercised by them in accordance with the statute designated in paragraph 2 of this Complaint, Defendant Board has, among others, the power and duty (a) to grant, issue, suspend and revoke all licenses and permits authorized to be issued under the aforesaid "Liquor Code" and under the regulations of the Pennsylvania Liquor Control Board for the manufacture, possession, sale, consumption, importation, use, storage, transportation and delivery of liquor, alcohol and malt or brewed beverages and (b) to regulate the issuance of such licenses and permits and the conduct, management, sanitation and equipment of places licensed or included in permits.

4. Included among the licensing and regulatory powers and duties so granted to and exercised by Defendant Board, pursuant to the aforesaid "Liquor Code," is the authority to issue a retail liquor license for any premises kept by a club, entitling such club to purchase liquor from a Pennsylvania Liquor Store, to keep such liquor on the premises and, subject to the provisions of the aforesaid "Liquor Code" and the Pennsylvania Liquor Control Board's regulations promulgated thereunder, to sell such liquor and also malt or brewed beverages to members for consumption on the club premises. The receipt and ownership of such a license is a valuable privilege granted to a club by the Commonwealth of Pennsylvania through Defendant Board.

5. A club, according to the aforesaid "Liquor Code," is any reputable group of individuals who are associated together not for profit for legitimate purposes of mutual benefit, entertainment, fellowship or lawful convenience, having some primary interest and activity to which the



sale of liquor or malt and beverages shall be secondary, and which regularly occupies a clubhouse or quarters for the use of its members.

6. Every applicant for a club liquor license under the aforesaid "Liquor Code" must apply therefor in writing to the Pennsylvania Liquor Control Board and supply such information as said Board prescribes. Every applicant must also submit a filing fee, a license fee and a bond. Every application must set forth a description of the premises for which a license is required and such other information, description or plan of that part of the club where it is proposed to keep and sell liquor as said Board, by regulation, requires.

7. Defendant Board, upon receipt of an application for a club liquor license, the proper fees and bond, may issue such license if they are satisfied that the statements in the application are true, that the applicant is the only person pecuniarily interested in the business sought to be licensed, that the applicant is a person of good repute, that the premises meet all of the requirements of the aforesaid "Liquor Code" and of the said Board's regulations, that the applicant seeks, in fact, a license for a club and that the issuance of such a license is not otherwise prohibited by any of the provisions of the aforesaid "Liquor Code."

8. Pursuant to the provisions of the aforesaid "Liquor Code," extensive regulation and restriction of the number of retail liquor licenses which may be issued and of all aspects of the possession and sale of liquor and malt and brewed beverages by a licensee is carried out by Defendant Board. Such regulations and restrictions encompass, among others, a limitation on the number of licenses which may be issued in a municipality dependent upon the population of the municipality, the places where such beverages may be sold, the persons to whom such beverages may be sold, the times when such beverages may be sold, the transfer and annual renewal of licenses and the nature and ex-

tent of financial records which must be maintained by a licensee. Provision is made in said "Liquor Code" for the revocation and suspension of licenses by Defendant Board for violation by a licensee of any provision of the said "Liquor Code" or of any regulation of the Pennsylvania Liquor Control Board and for the imposition of criminal penalties upon any person who violates specifically prohibited acts set forth in said "Liquor Code."

9. Nothing contained either in said "Liquor Code" or in Defendant Board's regulations promulgated thereunder prohibits, restricts or regulates the conduct of any licensee in refusing membership, admission or service to any person because of such person's race or color; and Defendant Board, through its Chairman, Defendant Scott, has stated that it has no power under said "Liquor Code" to refuse to issue or renew, or to revoke or suspend, any license because of any such refusal by a licensee.

10. Defendant Moose Lodge No. 107, Harrisburg, Pennsylvania, (hereinafter referred to as Defendant Lodge) is a club as defined in the said "Liquor Code" and is the holder of a club liquor license duly issued by Defendant Board.

11. On December 29, 1968, Plaintiff entered the premises of Defendant Lodge and requested service of food and beverage. Plaintiff is a Negro, a citizen of the United States, a member of the Pennsylvania House of Representatives and the duly elected leader of the majority party of said House of Representatives. Solely on account of Plaintiff's being a Negro, Defendant Lodge, through its agents and employees, refused service to Plaintiff.

12. Defendant Lodge has stated that under its charter, by-laws and/or operating practices, its membership, and its facilities, services and privileges attendant thereon, are not available to any Negro. Defendant Lodge's preliminary

membership application contains the following certification to be made by an applicant:

"I hereby certify that I am of sound mind and body, being a member of the Caucasian, white race, and not married to one of another race, and a believer in a Supreme Being."

13. The issuance and renewal of Defendant Lodge's club liquor license by Defendant Board, pursuant to the provisions of the Pennsylvania "Liquor Code," is unconstitutional and illegal and will continue to be unconstitutional and illegal for the reason that such actions necessarily involve the Defendant Board and, therefore, the Commonwealth of Pennsylvania in Defendant Lodge's acts of discrimination based solely on Plaintiff's being a Negro and deprive Plaintiff of the equal protection of the laws in violation of the Fourteenth Amendment to the United States Constitution.

14. By virtue of the acts of Defendant Board, in issuing and renewing Defendant Lodge's retail liquor license, Plaintiff has suffered, is now suffering and will continue to suffer irreparable injury. Plaintiff has no adequate remedy at law to redress this violation of his constitutional rights other than by this action for injunctive and declaratory relief because no other remedy would afford Plaintiff substantial protection from a continuation of Defendant Board's practices in issuing and renewing club liquor licenses to clubs which so discriminate.

WHEREFORE, Plaintiff prays that this Court:

1. Pursuant to the requirements of Title 28 U.S.C. §§ 2281 and 2284, convene a District Court of three judges to hear and determine this action.

2. After a hearing of this action according to law:

(a) Issue a judgment declaring that the Pennsylvania "Liquor Code," Act of April 12, 1951, P.L. 90,



as amended, insofar as it authorizes and requires Defendant Board to issue and/or renew a club liquor license to Defendant Lodge without reference to the fact that Defendant Lodge, by virtue of its charter or by-laws or operating practices, refuses to make available to Negroes facilities, services and privileges offered by it, is in violation of Plaintiff's right to the equal protection of the laws and, hence, violates the equal protection clause of the Fourteenth Amendment to the United States Constitution.

(b) Issue a judgment declaring that the Pennsylvania "Liquor Code," Act of April 12, 1951, P.L. 90, as amended, insofar as it does not prohibit the issuance and/or renewal of a club liquor license by the Pennsylvania Liquor Control Board to a club applicant or licensee which refuses to make available to Negroes the facilities, services and privileges offered by the applicant, is unconstitutional for the reason that it deprives Plaintiff of his right to the equal protection of the laws as guaranteed by the Fourteenth Amendment to the United States Constitution.

(c) Enjoin permanently Defendants Scott, Winner and Bortz acting as the Pennsylvania Liquor Control Board, and their agents and employees, from issuing and/or renewing a club liquor license to or for Defendant Lodge.

(d) Order Defendants Scott, Winner and Bortz, acting as the Pennsylvania Liquor Control Board, to revoke any club liquor license now held by Defendant Lodge.

(e) Order Defendants Scott, Winner and Bortz, acting as the Pennsylvania Liquor Control Board, to promulgate regulations governing the issuance and renewal of licenses granted by them for the sale of liquor and/or malt and brewed beverages by clubs which state that

no such license will hereafter be issued and/or renewed if the applicant or licensee refuses to make available to any person the facilities, services and privileges offered by it by reason of such person's race or color.

(f) Retain jurisdiction of the cause until such time as the Court is assured from the activities of Defendant, their agents and employees, that its orders herein have been complied with and that no further unconstitutional action is threatened.

(g) Accord all such other, further or additional relief as may appear to the Court to be equitable and just.

(h) Allow Plaintiff herein his costs, reasonable attorney's fees and such other further or additional relief as may appear to the Court to be equitable and just.

/s/ HARRY J. RUBIN

Harry J. Rubin

LIVERANT, SENFT AND COHEN  
15 South Duke Street  
York, Pennsylvania 17401  
(717) 845-2641

GERALD H. GOLDBERG

Harrisburg, Pennsylvania

### 3. Request for a Three Judge Court

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

[Title omitted in printing.]

### REQUEST FOR A THREE JUDGE COURT

Now, this 28th day of March, 1969, a complaint having been filed in this case seeking certain injunctive relief and a restraining order, and containing a request that a three judge district court as required by 28 U.S.C. §§ 2281 and

2284 be convened, and upon examination of the complaint it appearing that the action involves enforcement, operation and execution of a statute of the Commonwealth of Pennsylvania, I am of the opinion that a three judge court should be convened as requested.

Accordingly, a request for a three judge court is hereby made.

/s/ WILLIAM J. NEALON

*United States District Judge*

#### **4. Order Constituting a Three Judge Court**

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

[Title omitted in printing.]

#### **ORDER CONSTITUTING A THREE JUDGE COURT**

Pursuant to the provisions of section 2284, Title 28, United States Code, I designate Circuit Judge Abraham L. Freedman and Chief Judge Michael H. Sheridan to sit with District Judge William J. Nealon as members of the Court for the hearing and determination of the above-entitled case.

/s/ WILLIAM H. HASTIE

William H. Hastie

*Chief Judge Third*

*Judicial Council*

Dated: April 14, 1969



5. Motion To Dismiss Action of Defendant Members of  
Liquor Control Board

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

[Title omitted in printing.]

MOTION TO DISMISS ACTION

WILLIAM Z. SCOTT, Chairman, EDWIN WINNER, Member  
and GEORGE R. BORTZ, Member, Liquor Control Board,  
Commonwealth of Pennsylvania, Defendants, move the  
Court as follows:

1. To dismiss the action as to said defendants because  
the Complaint fails to state a claim upon which relief can  
be granted against said Defendants;
2. To dismiss the action as to said Defendants because  
no justiciable controversy exists as to said Defendants.

Respectfully submitted,

/s/ THOMAS J. SHANNON  
Thomas J. Shannon

*Attorney for William Z. Scott,  
Chairman, Edwin Winner,  
Member and George R.  
Bortz, Member Liquor  
Control Board, Common-  
wealth of Pennsylvania,  
Defendants*

**6. Motion To Dismiss of Defendant Moose Lodge No. 107**

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

[Title omitted in printing.]

**MOTION TO DISMISS**

AND NOW comes the above named Defendant, Moose Lodge No. 107, and moves your Honorable Court to dismiss the above action for the reason that the Complaint fails to state a claim against the Defendant, Moose Lodge No. 107, upon which relief can be granted.

Argument in support of this Motion will be presented at a hearing to be set by the Court at such time as the Court finds convenient.

CALDWELL, FOX & STONER  
Two North Market Square  
Harrisburg, Pennsylvania 17101

By /s/ THOMAS D. CALDWELL, JR.  
*Attorneys for Moose  
Lodge No. 107*

Dated: April 29, 1969.

**7. Order Denying Motion of Defendants Scott, Winner and Bortz To Dismiss the Action**

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

[Title omitted in printing.]

**ORDER DENYING MOTION OF DEFENDANTS  
SCOTT, WINNER AND BORTZ TO DISMISS THE  
ACTION**

This cause came on to be heard on the motion of defendants, William Z. Scott, Edwin Winner and George R. Bortz, to dismiss the action on the grounds that the complaint fails

to state a claim upon which relief can be granted, and that no justiciable controversy exists as to said defendants; and the court having considered the briefs filed herein, and having heard oral argument of counsel,

It is ORDERED that the defendants' motion be and the same is hereby denied.

/s/ ABRAHAM L. FREEDMAN  
*United States Circuit Judge*

/s/ MICHAEL H. SHERIDAN  
*Chief United States District Judge*

/s/ WILLIAM J. NEALON  
*United States District Judge*

Dated: September 22, 1969.

**8. Order Denying Motion of Defendant Moose Lodge No. 107  
To Dismiss the Action**

UNITED STATES DISTRICT COURT  
IN THE UNITED STATES DISTRICT COURT

[Title omitted in printing.]

**ORDER DENYING MOTION OF DEFENDANT MOOSE  
LODGE NO. 107 TO DISMISS THE ACTION**

This cause came on to be heard on the motion of defendant, Moose Lodge No. 107, to dismiss the action on the ground that the complaint fails to state a claim upon which relief can be granted; and the court having considered the briefs filed herein, and having heard oral argument of counsel,

It is ORDERED that the defendant's motion be and the same is hereby denied.

/s/ ABRAHAM L. FREEDMAN  
*United States Circuit Judge*

/s/ MICHAEL H. SHERIDAN  
*Chief United States  
District Judge*

/s/ WILLIAM J. NEALON  
*United States District Judge*

Dated: September 22, 1969.

### 9. Answer of Defendant Members of Liquor Control Board

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

[Title omitted in printing.]

### ANSWER

WILLIAM Z. SCOTT, Chairman, EDWIN WINNER, Member and GEORGE R. BORTZ, Member, LIQUOR CONTROL BOARD, COMMONWEALTH OF PENNSYLVANIA (hereinafter referred to as Liquor Control Board) make the following answer to the Complaint in the above captioned case:

1. The averments in Paragraphs 2, 6, 7, 8, 9 and 10 of the Complaint are admitted.

2. The averments in Paragraphs 3 and 4 of the Complaint are admitted with the qualification that the Liquor Control Board must exercise its powers in accordance with the provisions of the Pennsylvania "Liquor Code."

3. Paragraph 5 of the Complaint does not give the full definition of a club as set forth in the "Liquor Code" which is as follows:

" 'Club' shall mean any reputable group of individuals associated together not for profit for legitimate purposes of mutual benefit, entertainment, fellowship or lawful convenience, having some primary interest and activity to which the sale of liquor or malt and brewed beverages shall be only secondary, which, if incorporated, has been in continuous existence and operation for at least one year, and if first licensed after June sixteenth, one thousand nine hundred thirty-seven, shall have been incorporated in this Commonwealth, and, if unincorporated, for at least ten years, immediately preceding the date of its application for a license under this act, and which regularly occupies, as owner or lessee, a clubhouse or quarters for the use of its members. Continuous existence must be proven by satisfactory evidence. The board shall refuse to issue a license if it appears that the charter is not in possession of the original incorporators or their direct or legitimate successors. The club shall hold regular meetings, conduct its business through officers regularly elected, admit members by written application, investigation and ballot, and charge and collect dues from elected members, and maintain such records as the board shall from time to time prescribe, but any such club may waive or reduce in amount, or pay from its club funds, the dues of any person who was a member at the time he was inducted into the military service of the United States or was enrolled in the armed force of the United States pursuant to any selective service act during the time of the member's actual service or enrollment."

4. The Liquor Control Board is without knowledge or information sufficient to form a belief as to the truth of the



averments in Paragraphs 11 and 12 of the Complaint and proof thereof is demanded.

5. Paragraphs 1, 13 and 14 of the Complaint are denied and on the contrary it is averred that the issuance and renewal of a club liquor license by the Liquor Control Board pursuant to the provisions of the Pennsylvania "Liquor Code" is not unconstitutional or illegal and does not involve the Board or the Commonwealth of Pennsylvania in unlawful discrimination by reason of the fact that a club holding a liquor license issued by the Liquor Control Board may restrict its membership to persons of one race. It is further averred that such issuance and renewal of a club liquor license does not deprive Plaintiff of any rights under the Fourteenth Amendment to the Constitution of the United States.

/s/ THOMAS J. SHANNON

Thomas J. Shannon,

*Attorney for William Z. Scott,  
Chairman, Edwin Winner,  
Member and George R.  
Bortz, Member, Pennsyl-  
vania Liquor Control Board  
Commonwealth of Pennsyl-  
vania, Defendants*

#### 10. Answer of Defendant Moose Lodge No. 107

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

[Title omitted in printing.]

#### ANSWER OF DEFENDANT, MOOSE LODGE NO. 107

AND Now comes Moose Lodge No. 107 which answers the Complaint in the above captioned case as follows:

1. Paragraph 1 of the Complaint is denied, On the contrary, it is averred that neither action of Moose Lodge No.

107 nor the Pennsylvania Liquor Control Board as alleged in the Complaint deprived the Plaintiff of any right which arises under the Fourteenth Amendment, or any other provision in the Constitution of the United States.

2. Paragraphs 2, 3, and 4 of Plaintiff's Complaint are admitted.

5. Paragraph 5 of Plaintiff's Complaint is answered by incorporating herein Paragraph 3 of the Answer filed by the Defendant, Liquor Control Board.

6. Paragraphs 6, 7, 8, 9, 10, and 11 of Plaintiff's Complaint are admitted.

12. Paragraph 12 of Plaintiff's Complaint is denied insofar as it refers to Defendant's Charter By-laws and/or operating practices. Defendant is a member lodge of the Loyal Order of Moose. It received its charter from the Supreme Lodge of the World Loyal Order of Moose, a corporation not for profit, chartered under the laws of the State of Indiana. Under the terms of the aforesaid charter, Moose Lodge No. 107 is bound by the Constitution and general laws of the Supreme Lodge of the World Loyal Order of Moose, Title 7, Section 71.1 of which states in part as follows:

"The membership of lodges shall be composed of male persons of the Caucasian or white race above the age of twenty-one (21) years, and not married to someone of any other than the Caucasian or white race, who are of good moral character, physically and mentally normal, who shall profess a belief in a supreme being

13. Paragraphs 13 and 14 of the Plaintiff's Complaint are denied. On the contrary it is averred that neither the action of Moose Lodge No. 107 nor the Pennsylvania Liquor Control Board as alleged in the Complaint deprived the Plaintiff of any right which arises under the Fourteenth

Amendment or any provision of the Constitution of the United States.

#### AFFIRMATIVE DEFENSES

Further answering and by way of a first affirmative defense, Defendant, Moose Lodge No. 107, alleges:

1. Defendant as a member lodge of the Loyal Order of Moose is governed and subject to its constitution and by-laws. Defendant, in fact, operates in accordance with said constitution and by-laws.

2. The purposes of the lodge as set forth in the aforesaid constitution and by-laws are to unite its members in bonds of fraternity and to serve the members and their families in specified ways by the operation of institutions for the purpose of educating the young and assisting the aged.

3. Membership in the Defendant Lodge is not a right available to the general public. Membership is attained only on the basis of invitation. The invited applicant is required to sign an application, and a health statement, subjecting himself to investigation insofar as his moral character is concerned. Before his admission, his application is submitted to the Lodge at a duly called regular meeting, wherein his application is read, the report of the investigating committee is stated, and he is voted upon by the members assembled. Three (3) negative votes can bar any applicant from membership. The voting is secret. Thereafter, he is required to take an obligation, submit to an enrollment ceremony and take a final and binding obligation, all of which are conditions precedent to his being admitted to membership. Thereafter, the member is required to pay yearly dues.

4. The operation of the Lodge is, as in other fraternal organizations, to wit: closed meetings for the conduct of business, initiation of new members and election of officers.

5. Guests are not permitted to attend meetings of a Lodge and are permitted to attend social functions only by invitation.

6. Defendant Lodge is, as above set out, and in all other respects, private in nature and does not, or appear to, have any public characteristics. The social activities enjoyed by the members are but an extension of the social activities as enjoyed in their homes.

Further answering and by way of a second affirmative defense, Defendant alleges:

1. It is guaranteed its right to exist and its members have a right to join together with those whom they choose to be members under the First Amendment of the Constitution of the United States. The service of food and liquor is but an extension of these rights which make them more meaningful.

2. Impairment of these activities by the revocation of its liquor license would constitute a penalty imposed because of its exercise of its constitutionally protected right.

Further answering by way of a third affirmative defense, Defendant alleges:

1. Plaintiff has not suffered the abridgement of any constitutional right or the loss of any property by reason of any unlawful action on the part of the Defendant.

Further answering by way of a fourth affirmative defense, Defendant alleges:

1. Should the prayer of the Complaint herein be granted and the Defendant denied a right to obtain a liquor license, it would be greatly impeded in that it would sustain a loss of membership and its capability of carrying on its benevolent purposes would be seriously impaired.

Further answering by way of a fifth affirmative defense, Defendant alleges:

1. Should the prayer of the Complaint herein be granted and the Defendant be denied a liquor license or the right to obtain a liquor license, the Defendant would be greatly impeded in that it would sustain a great loss in membership and its capability of contributing to the purposes of the Supreme Lodge would be seriously impaired.

WHEREFORE, Defendant, having fully answered Plaintiff's Complaint, prays that the said Complaint be dismissed with prejudice.

CALDWELL, CLOUSER & KEARNS

123 Walnut Street, Harrisburg, Pa.

By /s/ THOMAS D. CALDWELL, JR.

*Attorneys for Defendant,*

*Moose Lodge No. 107*

### 11. Stipulation of Facts

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

[Title omitted in printing.]

### STIPULATION

It is hereby stipulated and agreed by and among Harry J. Rubin, attorney for K. Leroy Irvis, plaintiff, Thomas J. Shannon, attorney for William Z. Scott, Edwin Winner and George R. Bortz, members of the Liquor Control Board of the Commonwealth of Pennsylvania, defendant, and Thomas D. Caldwell, Jr., attorney for Moose Lodge No. 107, defendant, as follows:

A. The following facts are true and correct and shall be considered part of the record in this action:

1. Defendant Moose Lodge is a member lodge of the Loyal Order of Moose. It has no charter separate and



apart from the charter granted it by the Loyal Order of Moose nor by-laws separate and apart from those of the Loyal Order of Moose. Its operating practices conform to that charter and those by-laws, except as to catered functions as set forth in paragraph A-6, which are in violation of by-laws 92.1 and 92.2, which are set out in paragraph A-4(b). Defendant Moose Lodge actually received its charter from the Supreme Lodge of the World, Loyal Order of Moose, a corporation not for profit chartered under the laws of the State of Indiana. Under the charter granted it by the Supreme Lodge, defendant Moose Lodge is bound by the Constitution and general by-laws of the Supreme Lodge. Title 7, § 71.1 of this Constitution and general laws states in part as follows:

“The membership of lodges shall be composed of male persons of the Caucasian or white race above the age of twenty-one (21) years, and not married to someone of any other than the Caucasian or white race, who are of good moral character, physically and mentally normal, who shall profess a belief in a Supreme Being . . . .”

Pursuant to this provision, no Negro (including Plaintiff) may become a member of a Moose Lodge and enjoy any of the benefits or participate in any of the activities attendant thereon. Any person applying for membership in defendant Moose Lodge must submit a preliminary membership application containing the following certification:

“I hereby certify that I am of sound mind and body, being a member of the Caucasian, white race, and not married to one of another race, and a believer in a Supreme Being.”

2. The objects and purposes of defendant Moose Lodge are set forth in the Constitution of the Supreme

Lodge of the World, Loyal Order of Moose. These objects and purposes are stated as follows:

"The objects and purposes of said fraternal and charitable lodges, chapters, and other units are to unite in the bonds of fraternity, benevolence, and charity all acceptable white persons of good character; to educate and improve their members and the families of their members, socially, morally, and intellectually; to assist their members and their families in time of need; to aid and assist the aged members of the said lodges, and their wives; to encourage and educate their members in patriotism and obedience to the laws of the country in which such lodges or other units exist, and to encourage tolerance of every kind; to render particular service to orphaned or dependent children by the operation of one or more vocational, educational institutions of the type and character of the institution now called 'Mooseheart,' and located at Mooseheart, in the State of Illinois; to serve aged members and their wives in a special and an unusual way at one or more institutions of the character and type of the place called 'Moosehaven' located at Orange Park, in the State of Florida; to create and maintain foundations, endowment funds, or trust funds, for the purpose of aiding and assisting in carrying on the charitable and philanthropic enterprises heretofore mentioned; provided, however, that the corporation may act as trustee in the administration of such trust funds, with authority to use the interest therefrom and, in cases of emergency, the principal as well, for the perpetuation of Mooseheart and Moosehaven or either of them."

Admission to Mooseheart or Moosehaven is restricted to members of the various Moose Lodges and their immediate families.

3. Membership in the Defendant Lodge is not a right available to the general public. Membership is attained only on the basis of invitation. The invited applicant is required to sign an application, and a health statement, subjecting himself to investigation. Before his admission, his application is submitted to the Lodge at a duly called regular meeting, wherein his application is read, the report of the investigating committee is stated, and he is voted upon by the members assembled. Three (3) negative votes can bar any applicant from membership. The voting is secret. Thereafter, he is required to taken an obligation, submit to an enrollment ceremony and take a final and binding obligation, all of which are conditions precedent to his being admitted to membership. Thereafter, the member is required to pay yearly dues. However, no Negro (including the Plaintiff) may be considered for membership; and any Negro who might otherwise qualify to apply for membership and meet all of the foregoing conditions for membership is not eligible to apply for membership solely because he is a Negro.

4. (a) Defendant Lodge is, in all respects, private in nature and does not appear to have any public characteristics. The social activities enjoyed by the members may be considered similar in kind to social activities enjoyed by the members in their homes; however, no member must be specifically invited by any other member in order to gain entrance to the Lodge's facilities, and no member must obtain any license from Defendant Liquor Control Board in order to enjoy such social activities in his home. Only members are permitted in any social club or home operated or maintained by any Lodge, except upon the invitation of the House Committee or upon the invitation of a member in good standing with the consent of the House Committee. No person, whether a visitor or otherwise, not

a member in good standing is permitted to purchase anything whatsoever in any social club or home maintained or operated by any Lodge.

(b) Chapter 92 of the General Laws of the Supreme Lodge is entitled "Duties Placed Upon Club Operation. Sections 92.1 and 92.2 are as follows:

"Sec. 92.1—To prevent Admission of Non Members—There shall never at any time be admitted to any social club or home maintained or operated by any lodge, any person who is not a member of some lodge in good standing, and it is hereby expressly made the duty of each member of the Order when so requested to submit for inspection his receipt for dues to any member of any House Committee or its authorized employee.

"Sec. 92.2—To Prevent Admission—Exceptions—Only members shall be permitted in any social club or home operated or maintained by any lodge, except upon the invitation of the House Committee or upon the invitation of a member in good standing with the consent of the House Committee, and in the event any such person be admitted upon such invitation to any such social club or home, the member or members so inviting such person or persons shall be responsible for their conduct in such social club or home, and shall be responsible for any property damaged or carried away by any such visitor."

5. Defendant Moose Lodge conducts all of its activities in and from a building which is owned by it. It has never been the recipient of any public funds. None of its activities, including but not limited to, the acquisition of the building site, the construction of its building or any phase of its operation, was or is financed by public funds or obligations. Defendant Moose Lodge does not conduct any function or activity in conjunction

with any public or community group. It does not hold itself out as conducting any community or public activity.

6. Under the Pennsylvania Liquor Code (Section 401, 47 Purdon's Pa. Stat. Anno.—Section 4-401) and Regulation No. 113 of the Pennsylvania Liquor Control Board, a private club licensee may apply for and obtain the privilege of having its facilities used by non-member groups from the public at large on a catered basis. Defendant Moose Lodge has obtained such privilege and from time to time makes its facilities available to such groups on such basis. When it does so, Defendant Moose Lodge imposes no restrictions on the race or color of persons belonging to the outside group so using its facilities. The gross revenue realized by Defendant Moose Lodge from such use of its facilities on a catered basis is less than five (5%) per cent of its total operating revenues.

B. The following admissions shall be considered part of the record in this action:

1. Both Defendants admit the averments of paragraphs 2, 3, 4, 6, 7, 8, 9, 10 and 11 of Plaintiff's Complaint.

2. With regard to paragraph 5 of Plaintiff's Complaint, Plaintiff admits the averments of paragraph 3 of Defendant Liquor Control Board's answer (which averments are incorporated by reference by Defendant Moose Lodge in paragraph 5 of its answer).

3. Plaintiff admits the factual averments of the following paragraphs of Defendant Moose Lodge's affirmative defenses:

First affirmative defense: paragraphs 1, 4, 5.

Fourth affirmative defense: paragraph 1.

Fifth affirmative defense: paragraph 1.



C. The Regulations promulgated by Defendant Liquor Control Board, a copy of which is attached hereto, shall be considered part of the record in this action.

/s/ HARRY J. RUBIN

Harry J. Rubin

Liverant, Senft and Cohen

15 South Duke Street

York, Pennsylvania 17401

*Attorney for Plaintiff.*

/s/ THOMAS J. SHANNON

Thomas J. Shannon

Pennsylvania Liquor

Control Board

Harrisburg, Pennsylvania

*Attorney for Defendants*

*William Z. Scott, Edwin*

*Winner and George R.*

*Bortz*

/s/ THOMAS D. CALDWELL, JR.

Thomas D. Caldwell, Jr.

Caldwell, Clouser & Kearns

123 Walnut Street

Harrisburg, Pennsylvania

*Attorney for Defendant*

*Moose Lodge No. 107*

[Pennsylvania Liquor Control Board Regulations, attached to original Stipulation, omitted in printing; they are available in Appendix F to the Jurisdictional Statement.]

## 12. Plaintiff's Motion for Summary Judgment

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

[Title omitted in printing.]

### MOTION FOR SUMMARY JUDGMENT

Plaintiff moves the Court as follows:

1. That it enter, pursuant to Rule 56 of the Federal Rules of Civil Procedure, a summary judgment in Plaintiff's favor for the relief demanded in the complaint on the ground that there is no genuine issue as to any material fact and that Plaintiff is entitled to a judgment as a matter of law; or (in the alternative).

2. That if summary judgment is not rendered in Plaintiff's favor upon the whole case or for all the relief asked and a trial is necessary, the Court, at the hearing on the motion, by examining the pleadings and the stipulation before it and by interrogating counsel, ascertain what material facts are actually and in good faith controverted and thereupon enter an order specifying what facts appear without substantial controversy and directing such further proceedings in the action as are just.

3. This motion is based upon (a) Plaintiff's complaint, (b) both Defendants' answers and (c) the stipulation of counsel filed in this action.

/s/ HARRY J. RUBIN

Harry J. Rubin

Liverant, Senft and Cohen

15 South Duke Street

York, Pennsylvania 17401

*Attorney for Plaintiff*

### 13. Supplemental Stipulation of Facts

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

[Title omitted in printing.]

#### SUPPLEMENTAL STIPULATION

It is hereby stipulated and agreed by and among Harry J. Rubin, attorney for K. Leroy Irvis, plaintiff, Thomas J. Sliannon, attorney for William Z. Scott, Edwin Winner and George R. Bortz, members of the Liquor Control Board of the Commonwealth of Pennsylvania, defendant, and Thomas D. Caldwell, Jr., attorney for Moose Lodge No. 107, defendant, as follows:

1. Proper notice, in accordance with 28 U.S.C. § 2284, of the hearing scheduled on May 14, 1970, on plaintiff's motion for summary judgment was given to the Governor and Attorney General of Pennsylvania; and counsel for defendant Liquor Control Board appears at such hearing on behalf of both the Governor and Attorney General of Pennsylvania.

2. Defendant Moose Lodge No. 107 is a non-profit corporation organized under the laws of Pennsylvania and is the holder of a club retail liquor license issued by defendant Liquor Control Board pursuant to the provisions of the Pennsylvania "Liquor Code."

3. (a) A summary of the operating statements of defendant Liquor Control Board from the date it began operations through the close of the fiscal year July 1, 1968—June 30, 1969, marked Exhibit "A", is attached hereto and made a part hereof. Counsel agree that the figures appearing thereon are true and correct.

(b) No comparable figures are available regarding private club activities in the Commonwealth of Pennsylvania.

/s/ HARRY J. RUBIN  
 Harry J. Rubin  
 Liverant, Senft and Cohen  
 15 South Duke Street  
 York, Pennsylvania 17401  
*Attorney for Plaintiff*

/s/ THOMAS J. SHANNON  
 Thomas J. Shannon  
 Pennsylvania Liquor Control  
 Board  
 Harrisburg, Pennsylvania  
*Attorney for Defendants*  
*William Z. Scott, Edwin*  
*Winner and George R.*  
*Bortz*

/s/ THOMAS D. CALDWELL, JR.  
 Thomas D. Caldwell, Jr.  
 Caldwell, Clouser & Kearns  
 123 Walnut Street  
 Harrisburg, Pennsylvania  
*Attorney for Defendant*  
*Moose Lodge No. 107*

[Exhibit "A" to Supplemental Stipulation omitted in printing.]

## 14. Opinion of District Court

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

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Civil Action No. 69-107

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K. LEROY IRVIS, *Plaintiff*

v.

WILLIAM Z. SCOTT, Chairman, EDWIN WINNER, Member,  
and GEORGE R. BORTZ, Member, LIQUOR CONTROL BOARD,  
COMMONWEALTH OF PENNSYLVANIA, and  
MOOSE LODGE No. 107, Harrisburg, Pennsylvania,  
*Defendants.*

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Before FREEDMAN, *Circuit Judge*, SHERIDAN, *Chief Judge*,  
and NEALON, *District Judge*.

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OPINION

(Filed October 8, 1970)

FREEDMAN, *Circuit Judge*.

The facts in this case are undisputed. They are drawn from the pleadings and stipulations of the parties.

Defendant Moose Lodge No. 107 is a non-profit corporation organized under the laws of Pennsylvania. It is a subordinate lodge chartered by the Supreme Lodge of the World, Loyal Order of Moose, a non-profit corporation organized under the laws of Indiana, which we permitted to intervene and argue as *amicus curiae*. The local Lodge conducts all its activities in Harrisburg in a building which it owns. It has never been the recipient of public funds.



It is the holder of a club liquor license issued by the defendant Liquor Control Board of the Commonwealth of Pennsylvania, pursuant to the provisions of the Pennsylvania Liquor Code, Act of April 12, 1951, P.L. 90, as amended.<sup>1</sup>

Under its charter from the Supreme Lodge the local Lodge is bound by the constitution and general by-laws of the Supreme Lodge.<sup>2</sup> The Constitution of the Supreme Lodge provides: "The membership of the lodges shall be composed of male persons of the Caucasian or White race above the age of twenty-one years, and not married

<sup>1</sup> 47 Purdon's Pa. Stat. Annot. §§ 1-101 et seq.

<sup>2</sup> The objects and purposes of the local Lodge are set forth in the Constitution of the Supreme Lodge as follows:

"The objects and purposes of said fraternal and charitable lodges, chapters, and other units are to unite in the bonds of fraternity, benevolence, and charity all acceptable white persons of good character; to educate and improve their members and the families of their members, socially, morally, and intellectually; to assist their members and their families in time of need; to aid and assist the aged members of the said lodges, and their wives; to encourage and educate their members in patriotism and obedience to the laws of the country in which such lodges or other units exist, and to encourage tolerance of every kind; to render particular service to orphaned or dependent children by the operation of one or more vocational, educational institutions of the type and character of the institution called 'Mooseheart,' and located at Mooseheart, in the State of Illinois; to serve aged members and their wives in a special and unusual way at one or more institutions of the character and type of the place called 'Moosehaven,' located at Orange Park, in the State of Florida; to create and maintain foundations, endowment funds, or trust funds, for the purpose of aiding and assisting in carrying on the charitable and philanthropic enterprises heretofore mentioned; provided, however, that the corporation may act as trustee in the administration of such trust funds, with authority to use the interest therefrom and, in cases of emergency, the principal as well, for the perpetuation of Mooseheart and Moosehaven or either of them."

to someone other than the Caucasian or White race, who are of good moral character, physically and mentally normal, who shall profess a belief in a Supreme Being. . . ."<sup>3</sup> The lodges accordingly maintain a policy and practice of restricting membership to the Caucasian race and permitting members to bring only Caucasian guests on lodge premises, particularly to the dining room and bar.<sup>4</sup>

On Sunday, December 29, 1968, a Caucasian member in good standing brought plaintiff, a Negro, to the Lodge's dining room and bar as his guest and requested service of food and beverages. The Lodge through its employees refused service to plaintiff solely because he is a Negro.

Plaintiff complained of the refusal of service to the Pennsylvania Human Relations Commission, which upheld his complaint. The Commission held that the dining room was a "place of public accommodation," within the definition of the Pennsylvania Human Relations Act of February 28, 1961, P.L. 47,<sup>5</sup> and that the local Lodge had been guilty of discrimination against defendant. On appeal by the local Lodge the Court of Common Pleas of Dauphin County reversed the Commission and held that the dining room was not a place of public accommodation within the meaning of the Act.<sup>6</sup>

In the meanwhile plaintiff brought this action in the District Court for the Middle Section of Pennsylvania, and this three-judge court was constituted under 28 U.S.C. § 2281 to determine whether the issuance or renewal by

<sup>3</sup> Section 71-1.

<sup>4</sup> Section 92.2 of the Constitution of the Supreme Lodge permits members to invite non-members, apparently without limitation, to social clubs maintained by a lodge. Under § 92.6 only a member may make any purchase.

<sup>5</sup> 43 Purdon's Pa. Stat. Annot. §§ 951 et seq.

<sup>6</sup> Pennsylvania Human Relations Commission v. The Loyal Order of Moose, Lodge No. 107, — Pa. D. & C. 2d — (C.P. Dauphin County, March 6, 1970).

the Pennsylvania Liquor Control Board under the Pennsylvania Liquor Code of a club liquor license to the local Lodge despite its discrimination against Negroes violates the Equal Protection Clause of the Fourteenth Amendment.

Racial discrimination is undisputed in this case. It was not only practiced against plaintiff by the local Lodge but is required by the constitution of the Supreme Lodge.

The question in the case, therefore, is focused on whether the admitted discrimination by the local Lodge in refusing to serve plaintiff a drink of liquor because of his race bore the attributes of state action and so falls within the prohibition of the Fourteenth Amendment against the denial by a state of the equal protection of the laws.

The boundaries which define what is state action are not always clear.<sup>7</sup> This case presents a situation which is one of first impression. It comes to us surrounded by a mass of decisions which can serve as guides, although they do not authoritatively direct our conclusion.<sup>8</sup>

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<sup>7</sup> "Because the virtue of the right to equal protection of the laws could lie only in the breadth of its application, its constitutional assurance was reserved in terms whose imprecision was necessary if the right were to be enjoined in the variety of individual-state relationships which the Amendment was designed to embrace. For the same reason, to fashion and apply a precise formula for recognition of state responsibility under the Equal Protection Clause is an 'impossible task' which 'This Court has never attempted.' *Kotch v. Pilot Comm'rs*, 330 U.S. 552, 556. Only by sifting facts and weighing circumstances could the nonobvious involvement of the State in private conduct be attributed its true significance." *Burton v. Wilmington Parking Authority*, 365 U.S. 715, 722 (1961).

<sup>8</sup> A few of the leading discussions of the subject of state action are *Developments in the Law: Equal Protection*, 82 Harv. L. Rev. 1065 (1969); Black, *Forward: "State Action, Equal Protection, and California's Proposition 14,"* 81 Harv. L. Rev. 69 (1968); Paulsen, *The Sit-In Cases of 1964: "But Answer Came There None,"* 1964 Sup. Ct. Rev. 137 (1964); Henkin, *Shelley v. Kraemer: Notes for a Revised Opinion*, 110 U. Pa. L. Rev. 473 (1962); Lewis, *The Meaning of State Action*, 60 Colum. L. Rev. 1083 (1960).

We believe the decisive factor is the uniqueness and the all-pervasiveness of the regulation by the Commonwealth of Pennsylvania of the dispensing of liquor under licenses granted by the state.<sup>7</sup> The regulation inherent in the grant of a state liquor license is so different in nature and extent from the ordinary licenses issued by the state that it is different in quality.

It had always been held in Pennsylvania, even prior to the Eighteenth Amendment, that the exercise of the power to grant licenses for the sale of intoxicating liquor was an exercise of the highest governmental power, one in which the state had the fullest freedom inhering in the police power of the sovereign.<sup>9</sup> With the Eighteenth Amendment which went into effect in 1919 the right to deal in intoxicating liquor was extinguished. The era of Prohibition ended with the adoption in 1933 of the Twenty-first Amendment, which has left to each state the absolute power to prohibit the sale, possession or use of intoxicating liquor, and in general to deal otherwise with it as it sees fit.<sup>10</sup>

Pennsylvania has exercised this power with the fullest measure of state authority. Under the Pennsylvania plan

<sup>9</sup> *Tahiti Bar, Inc. Liquor License Case*, 395 Pa. 355, 150 A.2d 112, appeal dismissed, 361 U.S. 85 (1959); *Cavanaugh v. Gelder*, 364 Pa. 361, 72 A.2d 713 (1950); *Spankard's Liquor License Case*, 138 Pa. Super. 251, 10 A.2d 899 (1940); *Commonwealth v. One Dodge Motor Truck*, 123 Pa. Super. 311, 187 A. 461 (1936). See also *Goesaert v. Cleary*, 335 U.S. 464, 465 (1948) ("The regulation of the liquor traffic is one of the oldest and most untrammelled of legislative powers. . ."); *Crane v. Campbell*, 245 U.S. 304, 308 (1917); *Mugler v. Kansas*, 123 U.S. 623 (1887) and *License Cases*, 46 U.S. (5 How.) 504 (1847).

<sup>10</sup> See, e.g., *Seagram & Sons, Inc. v. Hostetter*, 384 U.S. 35, 42 (1966); *Hostetter v. Idlewild Bon Voyage Liquor Corp.*, 377 U.S. 324, 330 (1964); *Ziffrin, Inc. v. Reeves*, 308 U.S. 132, 138 (1939); *State Board v. Young's Market Co.*, 299 U.S. 59 (1936). See generally, Note, *The Evolving Scope of State Power Under the Twenty-first Amendment*, 19 *Rutgers L.Rev.* 759 (1965).

the state monopolizes the sale of liquor through its so-called state stores, operated by the state. Resale of liquor is permitted by hotels, restaurants and private clubs, which must obtain licenses from the Liquor Control Board, authorizing them "to purchase liquor from a Pennsylvania Liquor Store [at a discount] and keep on the premises such liquor and, subject to the provisions of this Act and the regulations made thereunder to sell the same and also malt or brewed beverages to guests, patrons or members for consumption on the hotel, restaurant or club premises."<sup>11</sup>

The issuance or refusal of a license to a club is in the discretion of the Liquor Control Board.<sup>12</sup> In order to secure one of the limited number of licenses which are available in each municipality<sup>13</sup> an applicant must comply with extensive requirements, which in general are applicable to commercial and club licenses equally. The applicant must make such physical alterations in his premises as the Board may require and, if a club, must file a list of the names and addresses of its members and employees, together with such other information as the Board may require.<sup>14</sup> He must conform his overall financial arrangements to the statute's exacting requirements<sup>15</sup> and keep extensive records.<sup>16</sup> He may not permit "persons of ill repute" to frequent his premises<sup>17</sup> nor allow thereon at any time any "lewd, immoral or improper entertain-

<sup>11</sup> 47 Purdon's Pa. Stat. Annot. § 4-401(a).

<sup>12</sup> 47 Purdon's Pa. Stat. Annot. § 4-404.

<sup>13</sup> See 47 Purdon's Pa. Stat. Annot., § 4-461, as amended, and § 4-472.1. When the quota for commercial licenses is reached in a municipality, no new club license can be issued there even if a club license already granted is eliminated.

<sup>14</sup> 47 Purdon's Pa. Stat. Annot. § 4-403. See also § 1-102, "club."

<sup>15</sup> See, e.g., 47 Purdon's Pa. Stat. Annot. § 4-411 and § 4-493.

<sup>16</sup> See, e.g., 47 Purdon's Pa. Stat. Annot. § 4-493(12).

<sup>17</sup> 47 Purdon's Pa. Stat. Annot. § 4-493(14).



ment."<sup>18</sup> He must grant the Board and its agents the right to inspect the licensed premises at any time when patrons, guests or members are present.<sup>19</sup> It is only on compliance with these and numerous other requirements and if the Board is satisfied that the applicant is "a person of good repute" and that the license will not be "detrimental to the welfare, health, peace and morals of the inhabitants of the neighborhood," that the license may issue.<sup>20</sup>

Once a license has been issued the licensee must comply with many detailed requirements or risk its suspension or revocation. He must in any event have it renewed periodically. Liquor licenses have been employed in Pennsylvania to regulate a wide variety of moral conduct, such as the presence and activities of homosexuals,<sup>21</sup> performance by a topless dancer,<sup>22</sup> lewd dancing,<sup>23</sup> swearing,<sup>24</sup> being noisy or disorderly.<sup>25</sup> So broad is the state's power that the courts of Pennsylvania have upheld its restriction of freedom of expression of a licensee on the ground that in doing so it merely exercises its plenary power to attach conditions to the privilege of dispensing liquor which a licensee holds at the sufferance of the state.<sup>26</sup>

<sup>18</sup> 47 Purdon's Pa. Stat. Annot. § 4-493(10).

<sup>19</sup> 47 Purdon's Pa. Stat. Annot. § 4-493(21).

<sup>20</sup> 47 Purdon's Pa. Stat. Annot. § 4-404.

<sup>21</sup> Freeman Liquor License Case, 211 Pa. Super. 132, 235 A.2d 625 (1967).

<sup>22</sup> Scarcia Appeal, 46 Pa. D. & C. 2d 742 (C.P. Lehigh Co. 1968).

<sup>23</sup> Golden Bar, Inc. Liquor License Case No. 2, 193 Pa. Super. 404, 165 A.2d 287 (1960).

<sup>24</sup> Reiter Liquor License Case, 173 Pa. Super. 552, 554, 98 A.2d 465, 467 (1953).

<sup>25</sup> Petty Liquor License Case, 216 Pa. Super. 55, 258 A.2d 874 (1969) and cases there cited.

<sup>26</sup> Tahiti Bar, Inc. Liquor License Case, 395 Pa. 355, 360-62, 150 A.2d 112, 115-16, appeal dismissed 361 U.S. 85 (1959).

These are but some of the many reported illustrations of the use which the state has made of its unrestricted power to regulate and even to deny the right to sell, transport or possess intoxicating liquor. It would be difficult to find a more pervasive interaction of state authority with personal conduct. The holder of a liquor license from the Commonwealth of Pennsylvania therefore is not like other licensees who conduct their enterprises at arms-length from the state, even though they may have been required to comply with certain conditions, such as zoning or building requirements, in order to obtain or continue to enjoy the license which authorizes them to engage in their business. The state's concern in such cases is minimal and once the conditions it has exacted are met the customary operations of the enterprise are free from further encroachment. Here by contrast beyond the act of licensing is the continuing and pervasive regulation of the licensees by the state to an unparalleled extent. The unique power which the state enjoys in this area, which has put it in the business of operating state liquor stores and in the role of licensing clubs, has been exercised in a manner which reaches intimately and deeply into the operation of the licensees.

In addition to this, the regulations of the Liquor Control Board adopted pursuant to the statute affirmatively require that "every club licensee shall adhere to all the provisions of its constitution and by-laws."<sup>27</sup> As applied to the present case this regulation requires the local Lodge to adhere to the constitution of the Supreme Lodge<sup>28</sup> and thus to exclude non-Caucasians from membership in its licensed club. The state therefore has been far from neutral. It has declared that the local Lodge must adhere

<sup>27</sup> Regulations, § 113.09.

<sup>28</sup> As stipulated by the parties, Local Lodge No. 107 has no constitution or by-laws other than those of the Supreme Lodge, by which the local lodge is expressly governed under its charter.

to the discriminatory provision under penalty of loss of its license. It would be difficult in any event to consider the state neutral in an area which is so permeated with state regulation and control, but any vestige of neutrality disappears when the state's regulation specifically exacts compliance by the licensee with an approved provision for discrimination, especially where the exaction holds the threat of loss of the license.

However it may deal with its licensees in exercising its great and untrammelled power over liquor traffic, the state may not discriminate against others or disregard the operation of the Equal Protection Clause of the Fourteenth Amendment as it affects personal rights.<sup>29</sup> Here the state has used its great power to license the liquor traffic in a manner which has no relation to the traffic in liquor itself but instead, permits it to be exploited in the pursuit of a discriminatory practice. Here then are fully applicable the words of the Supreme Court in *Burton v. Wilmington Parking Authority*, 365 U.S. 715, 725 (1961), where discrimination by a coffee shop lessee in the municipal parking authority's garage building was held to be state action:

"[I]n its lease with Eagle the Authority could have affirmatively required Eagle to discharge the responsibilities under the Fourteenth Amendment imposed upon the private enterprise as a consequence of state participation. But no State may effectively abdicate its responsibilities by either ignoring them or by merely failing to discharge them whatever the motive may be. . . . By its inaction, the Authority, and through

<sup>29</sup> *Goesaert v. Cleary*, 335 U.S. 464, 466 (1948). See, e.g., *Parks v. Allen*, 409 F.2d 210 (5 Cir. 1969); *Atlanta Bowling Center, Inc. v. Allen*, 389 F.2d 713 (5 Cir. 1968); *Lewis v. City of Grand Rapids*, 356 F.2d 276 (6 Cir. 1966); *Seidenberg v. McSorleys' Old Ale House, Inc.*, — F. Supp. — (S.D.N.Y. 1970). See generally, *Provisions of Statute Regarding Personal Qualifications Necessary to Entitle One to License for Sale of Intoxicating Liquor, As Denial of Equal Protection of Laws*, 145 A.L.R. 509 (1943).

it the State, has not only made itself a party to the refusal of service, but has elected to place its power, property and prestige behind the admitted discrimination. The State has so far insinuated itself into a position of interdependence with Eagle that it must be recognized as a joint participant in the challenged activity, which, on that account, cannot be considered to have been so 'purely private' as to fall without the scope of the Fourteenth Amendment."<sup>30</sup>

As in *Burton* the state has "insinuated itself into a position of interdependence" with its club licensees, and as in *Shelley v. Kraemer*, 334 U.S. 1 (1948), it has undertaken to enforce the privately promulgated constitutional provisions of the club establishing discrimination.

<sup>30</sup> See *Evans v. Newton*, 382 U.S. 296, 299 (1966) ("Conduct that is formally 'private' may become so entwined with governmental policies or so impregnated with a governmental character as to become subject to the constitutional limitations placed upon state action. . . . That is to say, when private individuals or groups are endowed by the State with powers or functions governmental in nature, they become agencies or instrumentalities of the State and subject to its constitutional limitations."). See the discussion of *Burton*, *Evans* and related decisions in *Reitman v. Mulkey*, 387 U.S. 369, 378-81 (1967) and in *United States v. Guest*, 383 U.S. 745, 755-56 (1966) ("In a variety of situations the Court has found state action of a nature sufficient to create rights under the Equal Protection Clause even though the participation of the State was peripheral, or its action was only one of several co-operative forces leading to the constitutional violation."). See also, e.g., *Turner v. City of Memphis*, 369 U.S. 350, 353 (1962); *Pennsylvania v. Brown*, 392 F.2d 120 (3 Cir.), cert. denied 391 U.S. 921 (1968); *Smith v. Hampton Training School for Nurses*, 360 F.2d 577 (5 Cir. 1966); *Wimbish v. Pinellas County, Florida*, 342 F.2d 804 (5 Cir. 1965); *Smith v. Holiday Inns of America, Inc.*, 336 F.2d 630 (6 Cir. 1964); *Simkins v. Moses H. Cone Memorial Hospital*, 323 F.2d 959 (5 Cir. 1963).

See generally *Karst & Horowitz, Reitman v. Mulkey: A Telophase of Substantive Equal Protection*, 1967 Sup. Ct. Rev. 39, 55-79 (1967); *Peters, Civil Rights and State Non-Action*, 34 Notre Dame Lawyer, 303 (1959).

There is no question here of interference with the right of members of the Moose Lodge to associate among themselves in harmony with their private predilections. The state, however, may not confer upon them in doing so the authority which it enjoys under its police power to engage in the sale or distribution of intoxicating liquors, under a grant from the state which is conditioned in this case on the club's adherence to the requirement of its constitution and customs that it must practice discrimination and refuse membership or service because of race.

Nothing in what we here say implies a judgment on private clubs which limit participation to those of a shared religious affiliation or a mutual heritage in national origin. Such cases are not the same as the present one where discrimination is practiced solely on racial grounds and therefore collides head-on against the "clear and central purpose of the Fourteenth Amendment . . . to eliminate all official state sources of invidious racial discrimination in the States." *Loving v. Virginia*, 388 U.S. 1, 10 (1967); and cases there cited.

We therefore hold that the club license granted by the Liquor Control Board of the Commonwealth of Pennsylvania to the Moose Lodge No. 107 is invalid because it is in violation of the Equal Protection Clause of the Fourteenth Amendment of the Federal Constitution.

An appropriate form of decree may be submitted.

/s/ ABRAHAM L. FREEDMAN  
Abraham L. Freedman,  
*Circuit Judge*

/s/ MICHAEL H. SHERIDAN  
Michael H. Sheridan,  
*Chief Judge*

/s/ WILLIAM J. NEALON  
William J. Nealon, Jr.,  
*District Judge*



## 15. Final Decree of District Court

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Civil Action No. 69-107

K. LEROY IRVIS, *Plaintiff*

v.

WILLIAM Z. SCOTT, Chairman, EDWIN WINNER, Member,  
and GEORGE R. BORTZ, Member, LIQUOR CONTROL BOARD,  
COMMONWEALTH OF PENNSYLVANIA, and

MOOSE LODGE No. 107, Harrisburg, Pennsylvania,  
*Defendants.*

## FINAL DECREE

AND NOW; this 13th day of November, 1970, pursuant to the Opinion filed in this case on October 8, 1970, it is hereby ordered and decreed as follows:

1. The club liquor license presently held by defendant Moose Lodge No. 107 and issued to it by the Pennsylvania Liquor Control Board under the Pennsylvania Liquor Code is hereby adjudged and declared invalid because it is in violation of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

2. Defendants, the Pennsylvania Liquor Control Board, its members, William Z. Scott, Chairman, Edwin Winner and George R. Bortz, and their successors, are hereby directed forthwith to terminate and cancel the club liquor license issued by the Board to defendant Moose Lodge No. 107.

3. Defendants, the Pennsylvania Liquor Control Board, its members, William Z. Scott, Chairman, Edwin Winner and George R. Bortz, and their successors, are hereby permanently enjoined and restrained from issuing any club



liquor license to defendant Moose Lodge No. 107 as long as it follows a policy of racial discrimination in its membership or operating policies or practices.

4. Any party at any time may apply for modification of this decree.

5. Execution and enforcement of this decree is hereby stayed for a period of sixty (60) days.

/s/ ABRAHAM L. FREEDMAN  
Abraham L. Freedman,  
*Circuit Judge*

/s/ MICHAEL H. SHERIDAN  
Michael H. Sheridan,  
*Chief Judge*

/s/ WILLIAM J. NEALON  
William J. Nealon, Jr.,  
*District Judge*

#### 16. Motion of Moose Lodge To Modify Final Decree

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

[Title omitted in printing.]

#### MOTION

Now COMES MOOSE LODGE No. 107, Harrisburg, Pennsylvania, and respectfully moves that the Final Decree entered in the above entitled case, dated November 13, 1970, be modified by striking out the word "membership" in Line 7 of Paragraph 3 of said Final Decree, and substituting therefor the words "social club".

In support of such Motion, your Petitioner contends that by restraining defendants, the Pennsylvania Liquor Control Board and its members and successors from issuing any Club Liquor License to this defendant as long as it follows a policy of racial discrimination in its membership policies or practices; the Decree is in conflict with the Opinion of this Court, filed on October 8, 1970. The

Opinion states on Page 12: "There is no question here of interference with the right of members of the Moose Lodge to associate among themselves in harmony with their private predilections." The elimination of racial discrimination in the service of alcoholic beverages to guests of members will be obtained by requiring that the Club operating policies and practices of defendant Lodge do not deny members the right to invite non-caucasians to be served alcoholic beverages on all occasions when guests may be invited. To require more would violate this defendant's rights guaranteed by the First Amendment to the United States Constitution.

This Court has held the law to be that members of a private Club may discriminate according to race if they so desire. We respectfully submit this to be the law generally. This Court likewise has stated on Page 12 of its Opinion that the state, however, may not confer upon them in doing so "authority which it enjoys under its police power to engage in the sale or distribution of intoxicating liquors", when the Club practices racial discrimination. But this particular practice could be stopped without interfering with membership qualifications. This defendant recognizes the problem facing the Commonwealth of Pennsylvania in controlling guest privileges. The defendant could by proper action amend its By-Laws to conform to a Law or Liquor Control Board Regulation that admission of guests cannot be restricted as to race.

To go further, to hold that membership in the Lodge itself, without reference to intoxicating liquors, must not be limited, interferes with the constitutional right of association, which right this Court has recognized. Membership in a private Club carries with it many prerogatives besides the activity which can only be carried on under a Liquor License. These general activities cannot be impaired.

The only alleged illegal activity is the issuance of a License by a State Board to a private Club which uses the License to discriminate racially in the service of liquor

permitted by the license. This can be corrected.<sup>1</sup> But the State cannot reach further and say that because one racially discriminating activity is illegal because the State is involved, all racially discriminating activities are illegal even when the State is not involved.

Your Petitioner, therefore, respectfully prays that the Final Decree be opened up and modified and that the time for enforcement be extended for a period of sixty (60) days from the date of the modification.

Respectfully submitted,

CALDWELL, CLOUSER & KEARNS

By /s/ THOMAS D. CALDWELL, JR.

*Attorneys for Moose Lodge No. 107*

#### 17. Answer to Motion

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

[Title omitted in printing.]

#### ANSWER TO MOTION

The Defendant, Moose Lodge No. 107, has filed a motion requesting the Court to modify its final Decree entered on November 13, 1970, by striking out the word "membership" in the seventh line of the third paragraph and substituting the words "social club." While Plaintiff believes that the precise change suggested by the Defendant involves the use of words ("social club") which themselves have no precise meaning, the intent of Defendant's Motion is nevertheless clear from its argument; and Plaintiff will address itself directly to Defendant's contentions in this regard rather than to the words themselves.

It is Plaintiff's position that no modification of the type suggested by Defendant is justified. Defendant argues

that the Court went beyond its opinion in ordering the Pennsylvania Liquor Control Board not to issue a club liquor license to Defendant as long as it follows a policy of racial discrimination in its membership policies, among other things. Defendant states that the Court's opinion would have been properly implemented by a Decree which simply forbade Defendant Moose Lodge from denying service of alcoholic beverages to Negroes who are brought to the Moose Club as a guest of a member. This position is both unjustified and is based upon a misunderstanding of what this case involves.

First, if all the Decree were to do was to require the Defendant Moose Lodge to serve alcoholic beverages to Negro guests of members, it seems obvious that the elimination of the State as a participant in a racially discriminatory activity would not be accomplished in any way whatsoever. The discriminatory membership requirements and discriminatory operating policies of Defendant Moose Lodge would remain intact, and the State would still be a participant by virtue of the issuance to the Club of a State liquor license. To say that the State's participation would be eliminated because a member of the Club, *if he wished to do so*, could bring to the Club a Negro guest and that the Club would be required to serve this Negro guest would accomplish nothing towards insuring that the Club's use of the great privilege granted it by the State would be used in a nondiscriminatory fashion. Negroes would still not be allowed to become members; Negroes would still not be allowed freely to make use of the license which is granted to the Club; and Negroes certainly could not force themselves upon members as guests. Therefore the suggestion made by the Defendant Moose Lodge does not even begin to meet the problem so aptly stated by the Court in its opinion where it speaks of the use of the license in a way which "permits it to be exploited in the pursuit of a discriminatory practice" (page 11).

Second, Defendant's Motion, like much of its prior argument in this case, continues to be based upon its inability or failure to understand the difference between the issuance of a liquor license by the Commonwealth to a discriminating private club and the right of the members of that club to associate freely among themselves. Both Plaintiff and the Court have taken pains to point out that nothing involved in this case attempts to interfere with the latter right. The members of Defendant Moose Lodge are free to associate with whom they please. Nevertheless, somehow, Defendant Moose Lodge continues to inject into this right of free association a concomitant right to receive a club liquor license allowing it to serve alcoholic beverages. No such concomitant right is inherent in the right to associate freely; and as Plaintiff has previously pointed out, had the Commonwealth of Pennsylvania chosen not to license private clubs at all, Defendant Moose Lodge would be in no different position with regard to its right to serve alcoholic beverages. No rights of Defendant Moose Lodge under the First Amendment would have been violated were such the case; no rights of defendant Moose Lodge are violated by stating that it may not have a club liquor license under the present circumstances. It is this inability of Defendant Moose Lodge to comprehend this distinction which has caused its present confusion over the wording of the Decree of the Court; and as Plaintiff also has previously pointed out, it leads one to wonder just how significant and valuable a privilege the right to associate freely is to the members of the Defendant Moose Lodge absent the privilege granted by the holding of a club liquor license.

Since the service of liquor under the privilege granted by the club liquor license is inextricably interwoven with the privileges of membership in Defendant Moose Lodge and with the activities and practices of Defendant Moose Lodge, there is no way of making the type of distinction suggested by the Defendant Moose Lodge. Moreover, the

State is not seeking (nor did the Court's Decree seek) to say that "all racially discriminating activities are illegal even when the State is not involved," as Defendant Moose Lodge argues in the next-to-last paragraph of its Motion. Nothing in Plaintiff's Complaint, nothing in Plaintiff's argument, nothing in the Court's Opinion, nothing in the Court's Decree seeks to prevent Defendant Moose Lodge from engaging in any racially discriminatory activities or to say that such activities are illegal. All that Plaintiff's Complaint, Plaintiff's argument, the Court's Opinion and the Court's Decree state is that it is illegal for the Commonwealth of Pennsylvania to issue a club liquor license to Defendant Moose Lodge as long as Defendant Moose Lodge wishes to continue its discriminatory practices. Thus, the effect of the Decree is to prevent the State from doing something, not to prevent Defendant Moose Lodge from doing anything. It is the choice of Defendant Moose Lodge to make if it wishes to comply with the constitutional requirements stated in the Opinion and Decree of the Court and to obtain a club liquor license or if it wishes to adhere to its existing discriminatory membership and operating policies and practices and forego the privilege inherent in the obtaining of such a license.

THEREFORE, Plaintiff respectfully urges that the Court deny Defendant's Motion to open up and modify the final Decree.

Respectfully submitted,

LIVERANT, SENFT AND COHEN

By /s/ HARRY J. RUBIN  
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GERALD GOLDBERG

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**18. Order Denying Motion To Modify**  
**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

Civil Action No. 69-107

**K. LEROY IRVIS, Plaintiff,**

**v.**

**WILLIAM Z. SCOTT, Chairman, EDWIN WINNER, Member,**  
**and GEORGE R. BORTZ, Member, LIQUOR CONTROL BOARD,**  
**COMMONWEALTH OF PENNSYLVANIA, and**

**MOOSE LODGE No. 107, Harrisburg, Pennsylvania,**  
**Defendants.**

**ORDER**

AND NOW, this 5th day of January, 1971, the motion of defendant Moose Lodge No. 107 to modify the final decree is hereby denied.

/s/ ABRAHAM L. FREEDMAN  
Abraham L. Freedman,  
Circuit Judge

/s/ MICHAEL H. SHERIDAN  
Michael H. Sheridan,  
Chief Judge

/s/ WILLIAM J. NEALON  
William J. Nealon, Jr.,  
District Judge



**Supreme Court of the United States**

**No. 1292-----, October Term, 1970**

**Moose Lodge No. 107,**

**Appellant,**

**v.**

**K. Leroy Irvis, et al.**

**APPEAL from the United States District Court  
for the Middle District of Pennsylvania.**

**The statement of jurisdiction in this case  
having been submitted and considered by the Court,  
probable jurisdiction is postponed to the hearing  
of the case on the merits.**

**March 29, 1971**

FILED  
FEB 2 1970

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1970

No. ~~1292~~ 70-75

MOOSE LODGE No. 107, *Appellant*,

v.

K. LEROY IRVIS, and WILLIAM Z. SCOTT, Chairman,  
EDWIN WINNER, Member, and GEORGE R. BORTZ,  
Member, LIQUOR CONTROL BOARD, COMMONWEALTH  
OF PENNSYLVANIA

Appeal from the United States District Court for the  
Middle District of Pennsylvania

**JURISDICTIONAL STATEMENT**

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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1970

\_\_\_\_\_  
No.  
\_\_\_\_\_

MOOSE LODGE No. 107, *Appellant,*

v.

K. LEROY IRVIS, and WILLIAM Z. SCOTT, Chairman,  
EDWIN WINNER, Member, and GEORGE R. BORTZ,  
Member; LIQUOR CONTROL BOARD, COMMONWEALTH  
OF PENNSYLVANIA

\_\_\_\_\_  
Appeal from the United States District Court for the  
Middle District of Pennsylvania

\_\_\_\_\_  
**JURISDICTIONAL STATEMENT**  
\_\_\_\_\_

MOOSE LODGE No. 107, appellant herein, prays that  
an order be entered noting probable jurisdiction of its  
appeal from the final decree of the United States Dis-  
trict Court for the Middle District of Pennsylvania,  
three judges sitting, entered in this cause on November  
13, 1970.

### OPINION BELOW

The opinion of the court below (Appendix A, *infra*, pp. A1-A11) is reported at 318 F. Supp. 1246.

### JURISDICTION

(i) This was an action under 42 U.S.C. § 1983 seeking injunctive and declaratory relief on the ground that the Pennsylvania Liquor Code (bound separately in Appendix F), as applied, denied the plaintiff the equal protection of the laws in violation of the Fourteenth Amendment.

(ii) The final decree of the court below (Appendix B, *infra*, pp. A12-A13) was entered on November 13, 1970. A motion to modify that decree, filed on December 2, 1970, was denied on January 5, 1971 (Appendix C, *infra*, p. A14). A motion to stay the final decree pending the present appeal was granted on January 8, 1971. The notice of appeal (Appendix D, *infra*, p. A15) was filed in the court below on January 4, 1971.

(iii) The jurisdiction of this Court to review the judgment below by appeal is conferred by 28 U.S.C. §§ 1253 and 2101(b).

(iv) The case relied on to sustain the jurisdiction of the three-judge court and hence to establish that the remedy is by appeal is *Flast v. Cohen*, 392 U.S. 83, 88-91.

The authorities relied on to sustain the substantiality of the questions presented by this appeal are *Bell v. Maryland*, 378 U.S. 226, 313; *Evans v. Newton*, 382 U.S. 296, 298; and Section 201(e) of the Civil Rights Act of 1964 (42 U.S.C. § 2000a(e); Appendix E, *infra*, p. A16).

(v) The State statutes and regulations which, in their application to the plaintiff below in the circum-

stances of this case, were asserted to violate the Equal Protection Clause of the Fourteenth Amendment (Appendix E, *infra*, p. A16), are the Pennsylvania Liquor Code and the regulations thereunder, all of which are set out in full in Appendix F, which is separately bound.

### QUESTIONS PRESENTED

1. Whether the issuance of a liquor license to a private club so far constitutes state action as to render enforcement by that club of its restrictive membership provisions a violation of the Equal Protection Clause.
2. Whether, as held by the court below, a private club is free to impose religiously restrictive membership provisions notwithstanding its possession of a state liquor license, although prohibited by the Equal Protection Clause from imposing racially restrictive membership provisions under identical circumstances.
3. Whether the statutory exemption for private clubs in § 201(e) of the Civil Rights Act of 1964 so far gives effect to the constitutionally protected liberties of privacy and private association that this Congressionally directed exemption should be respected as marking the constitutional boundaries of an area wholly free from governmental supervision or interference.
4. Whether, assuming solely for purposes of argument that possession of a state liquor license by a private club constitutes state action subject to constitutional restrictions, the proper remedy for giving effect both to the visiting individual's right to equal protection of the laws as well as to the members' rights to privacy and private association would have been an injunction against the state requiring the private club to enforce its own restrictive membership regulations,



rather than what the court below actually decreed, namely, the termination of the private club's state liquor license until it altered its membership qualifications.

### STATEMENT

This was an action under 42 U.S.C. § 1983 seeking injunctive and declaratory relief on the ground that Pennsylvania's statutory scheme for the regulation of the liquor traffic, under which a liquor license was issued to a private club that had restrictive membership provisions, denied the plaintiff the equal protection of the laws when he was refused service because of his race. Relief was granted on the view that possession of the liquor license transformed into state action what was done by the private club, although the court below went on to hold that religiously restrictive membership provisions would have involved no similar constitutional deprivation.

#### A. Background of the Controversy

Since the facts in this case were stipulated, we deem it appropriate to adopt the recital appearing in the opinion below (Appendix A, *infra*, pp. A1-A4):

"Defendant Moose Lodge No. 107 is a non-profit corporation organized under the laws of Pennsylvania. It is a subordinate lodge chartered by the Supreme Lodge of the World, Loyal Order of Moose, a non-profit corporation organized under the laws of Indiana, which we permitted to intervene and argue as *amicus curiae*. The local Lodge conducts all its activities in Harrisburg in a building which it owns. It has never been the recipient of public funds. It is the holder of a club liquor license issued by the defendant Liquor Control Board of the Commonwealth of Pennsylvania, pursu-



ant to the provisions of the Pennsylvania Liquor Code, Act of April 12, 1951, P.L. 90, as amended.<sup>1</sup>

"Under its charter from the Supreme Lodge the local Lodge is bound by the constitution and general by-laws of the Supreme Lodge.<sup>2</sup> The Constitution of the Supreme Lodge provides:

"147 Purdon's Pa. Stat. Annot. §§ 1-101 et seq."

[All footnotes are in the original unless otherwise indicated by square brackets; the Pennsylvania Liquor Code is separately bound in Appendix F.]

"The objects and purposes of the local Lodge are set forth in the Constitution of the Supreme Lodge as follows:

"The objects and purposes of said fraternal and charitable lodges, chapters, and other units are to unite in the bonds of fraternity, benevolence, and charity all acceptable white persons of good character; to educate and improve their members and the families of their members, socially, morally, and intellectually; to assist their members and their families in time of need; to aid and assist the aged members of the said lodges, and their wives; to encourage and educate their members in patriotism and obedience to the laws of the country in which such lodges or other units exist, and to encourage tolerance of every kind; to render particular service to orphaned or dependent children by the operation of one or more vocational, educational institutions of the type and character of the institution called "Mooseheart," and located at Mooseheart, in the State of Illinois; to serve aged members and their wives in a special and unusual way at one or more institutions of the character and type of the place called "Moosehaven," located at Orange Park, in the State of Florida; to create and maintain foundations, endowment funds, or trust funds, for the purpose of aiding and assisting in carrying on the charitable and philanthropic enterprises heretofore mentioned; provided, however, that the corporation may act as trustee in the administration of such trust funds, with authority to use the interest therefrom and, in cases of emergency, the principal as well, for the perpetuation of Mooseheart and Moosehaven or either of them."

[The Constitution of the Supreme Lodge of the World, Loyal Order of Moose, in its entirety, as amended in 1967 and in force at the time of the incident in question, is separately bound in Appendix G.]

"The membership of the lodges shall be composed of male persons of the Caucasian or White race above the age of twenty-one years, and not married to someone other than the Caucasian or White race, who are of good moral character, physically and mentally normal, who shall profess a belief in a Supreme Being. . . ."<sup>3</sup> The lodges accordingly maintain a policy and practice of restricting membership to the Caucasian race and permitting members to bring only Caucasian guests on lodge premises, particularly to the dining room and bar.<sup>4</sup>

"On Sunday, December 29, 1968, a Caucasian member in good standing brought plaintiff, a Negro, to the Lodge's dining room and bar as his guest and requested service of food and beverages. The Lodge through its employees refused service to plaintiff solely because he is a Negro.

"Plaintiff complained of the refusal of service to the Pennsylvania Human Relations Commission, which upheld his complaint. The Commission held that the dining room was a 'place of public accommodation' within the definition of the Pennsylvania Human Relations Act of February 28, 1961, P.L. 47,<sup>5</sup> and that the local Lodge had been guilty of discrimination against defendant. On appeal by the local Lodge the Court of Common Pleas of Dauphin County reversed the Commission and held that the dining room was not a

<sup>3</sup> Section 71-1."

<sup>4</sup> Section 92.2 of the Constitution of the Supreme Lodge permits members to invite non-members, apparently without limitation, to social clubs maintained by a lodge. Under § 92.6 only a member may make any purchase."

<sup>5</sup> 43 Purdon's Pa. Stat. Annot. §§ 951 et seq."

place of public accommodation within the meaning of the Act.<sup>6</sup>

"In the meanwhile plaintiff brought this action in the District Court for the Middle Section of Pennsylvania, and this three-judge court was constituted under 28 U.S.C. § 2281 to determine whether the issuance or renewal by the Pennsylvania Liquor Control Board under the Pennsylvania Liquor Code of a club liquor license to the local Lodge despite its discrimination against Negroes violates the Equal Protection Clause of the Fourteenth Amendment."

#### B. The Holding Below

The court below first considered whether the admitted discrimination on the part of the appellant Lodge "bore the attributes of state action" (*infra*, p. A4). While admitting that "This case presents a situation which is one of first impression" (*ibid.*), the court concluded that (*infra*, p. A5)—

"We believe the decisive factor is the uniqueness and the all-pervasiveness of the regulation by the Commonwealth of Pennsylvania of the dispensing of liquor under licenses granted by the state. The regulation inherent in the grant of a state liquor license is so different in nature and extent from the ordinary licenses issued by the state that it is different in quality."

<sup>6</sup> Pennsylvania Human Relations Commission v. The Loyal Order of Moose, Lodge No. 107, — Pa. D. & C. 2d — (C.P. Dauphin County, March 6, 1970.)

[Actually, this decision is reported in the Dauphin County Reports at 92 Dauph. 234. It has been appealed to the Pennsylvania Superior Court.]

After summarizing the extent of the restrictions imposed by the State in regulating the liquor traffic, and stating (*infra*, p. A8) that "It would be difficult to find a more pervasive interaction of state authority with personal conduct," the court said (*infra*, pp. A8-A9; footnotes omitted):

"In addition to this, the regulations of the Liquor Control Board adopted pursuant to the statute affirmatively require that 'every club licensee shall adhere to all the provisions of its constitution and by-laws.' As applied to the present case this regulation requires the local Lodge to adhere to the constitution of the Supreme Lodge and, thus to, exclude non-Caucasians from membership in its licensed club. The state therefore has been far from neutral. It has declared that the local Lodge must adhere to the discriminatory provision under penalty of loss of its license. It would be difficult in any event to consider the state neutral in an area which is so permeated with state regulation and control, but any vestige of neutrality disappears when the state's regulation specifically exacts compliance by the licensee with an approved provision for discrimination, especially where the exaction holds the threat of loss of the license."

Accordingly, on the asserted authority of *Burton v. Wilmington Pkg. Auth.*, 365 U.S. 715, 725, and of *Shelley v. Kraemer*, 334 U.S. 1, the court concluded that the state had practiced discrimination (*infra*, p. A11):

"There is no question here of interference with the right of members of the Moose Lodge to associate among themselves in harmony with their private predilections. The state, however, may not confer upon them in doing so the authority which

it enjoys under its police power to engage in the sale or distribution of intoxicating liquors, under a grant from the state which is conditioned in this case on the club's adherence to the requirement of its constitution and customs that it must practice discrimination and refuse membership or service because of race."

But, while holding racial discrimination to be unconstitutional, the court approved religious discrimination by private clubs, saying (*infra*, p. A11) \

"Nothing in what we here say implies a judgment on private clubs which limit participation to those of a shared religious affiliation or a mutual heritage in national origin. Such cases are not the same as the present one where discrimination is practiced solely on racial grounds and therefore collides head-on against the 'clear and central purpose of the Fourteenth Amendment . . . to eliminate all official state sources of invidious racial discrimination in the States.' *Loving v. Virginia*, 388 U.S. 1, 10 (1967); and cases there cited."

Accordingly, the court held (*ibid.*) "that the club license granted by the Liquor Control Board of the Commonwealth of Pennsylvania to the Moose Lodge No. 107 is invalid because it is in violation of the Equal Protection Clause of the Fourteenth Amendment of the Federal Constitution."

### C. Final Decree; Appeal

The decree entered on this opinion (Appendix B, *infra*, pp. A12-A13), (1) declared the liquor license invalid; (2) directed the Pennsylvania Liquor Control Board and its members to terminate the same; and (3) enjoined the Board and its members "from issuing

any club liquor license to defendant Moose Lodge No. 107 as long as it follows a policy of racial discrimination in its membership or operating policies or practices."

A motion to modify the foregoing by substituting the words "social club" for the word "membership," filed on December 3, 1970, was denied on January 5, 1971 (Appendix C, *infra*, p. A14). But a motion to stay the decree pending appeal to this Court was granted on January 8, 1971.

Meanwhile, on January 4, 1971, Moose Lodge No. 107 had filed its notice of appeal (Appendix D, *infra*, p. A15), joining the non-appealing members of the Liquor Control Board as appellees pursuant to this Court's Rule 10(4).

### THE QUESTIONS ARE SUBSTANTIAL

In pursuit of the objective of striking at particular forms of discrimination wherever encountered, the court below has not only rewritten the Equal Protection Clause to reach purely private action, it has actually done irreparable damage to the constitutionally protected rights of privacy and of private association, while drawing in the process a wholly unsupportable distinction between racial and religious discrimination.

Moreover, the decision below disregards without even the compliment of mention not only the scope of discrimination declared by the Congress, which assuredly rejects the racial versus religious distinction newly fashioned in the opinion below, but also the Congressional exemption for bona fide private clubs, which gives effect to the constitutional rights of privacy and association.



A ruling so disruptive of normal traditional and social relationships imperatively calls for corrective review by this Court.

*First.* The only basis for "state action" in this case is that the appellant Moose Lodge No. 107, admittedly a bona fide private club, has been issued a liquor license by the Commonwealth of Pennsylvania.

That has not hitherto constituted state action under any decision cited in the opinion or of which we are independently aware. Many activities in today's complex and crowded world require licenses before they can lawfully be undertaken, but that circumstance has never before transformed private into state action. Every individual building his own house, or driving a car, or practicing law, requires a license. But the home-owner has absolute liberty to exclude, so does the private automobilist, and a lawyer in America has always enjoyed complete freedom to refuse to represent particular clients on any ground whatsoever, good or bad, praiseworthy or otherwise.

The degree of regulation implicit in a license has not up to now been deemed to metamorphose the action of the licensed individual into that of the licensing state. Nor are we dealing here with situations where the private individual is engaged in activity on publicly owned property (*Burton v. Wilmington Pkg. Auth.*, 365 U.S. 715; *Turner v. City of Memphis*, 369 U.S. 350; *Wimbish v. Pinellas County*, 342 F. 2d 804 (C.A. 5)), or where he relies on public assistance in the conduct of his affairs, whether of the police (e.g., *Peterson v. Greenville*, 373 U.S. 244; *Lombard v. Louisiana*, 373 U.S. 267; *Robinson v. Florida*, 378 U.S. 153) or of the courts (*Shelley v. Kraemer*, 334 U.S. 1), or where he

is in receipt of public funds (e.g., *Smith v. Hampton Training School for Nurses*, 360 F. 2d 577 (C.A. 4); *Simkins v. Moses H. Cone Memorial Hospital*, 323 F. 2d 959 (C.A. 4), certiorari denied, 376 U.S. 938; cf. *Smith v. Holiday Inns of America*, 336 F. 2d 630 (C.A. 6)).

The test of "all-pervasiveness" suggested by the court below as the hallmark of state action where regulation and licensing is in question (*infra*, p. A5; quoted above at p. 7) is actually no test at all. When is a scheme of regulation pervasive or all-pervasive? At what point does regulation or licensing by the state reach the point where the person licensed falls under constitutional restrictions directed only at the licensing authority? And how can the degree of regulation have the effect of turning the regulated individual into a public officer or agent? A similar contention, to the effect that a state's regulation of and grants of exemption to newspapers so far made them arms of the state as to forbid their rejection of editorial advertisements, was recently—and rightly—rejected by the Seventh Circuit. *Chicago Joint Board v. Chicago Tribune Co.*, C.A. 7, No. 18300, decided December 17, 1970 (abstracted at 39 U.S. Law Week 2360).

The substance of the matter is that the grant of a license to operate no more turns that operation into state action than the grant by a state of tax exemption to a religious body involves state establishment of religion (*Walz v. Tax Commission*, 397 U.S. 664)—or than the "pervasive" licensing by Pennsylvania under its Solicitation of Charitable Funds Act (of August 9, 1963, P.L. 628, 10 Purdon's Pa. Stat. Annot. §§ 160-1 *et seq.*) of those who solicit money for churches transforms that measure into state support of religion.

As the court below truly said—(*infra*, p. A4), “This case presents a situation which is one of first impression,”—and it is such a case because its holding and reasoning wholly lack support in the authorities. After all, the Equal Protection Clause provides—and here as elsewhere in constitutional interpretation it is well to start with the text (Appendix E, *infra*, p. A16)—the Equal Protection Clause provides that “No State shall \* \* \* deny to any person within its jurisdiction the equal protection of the laws.” The Constitution says “No State,” not “No club,” and not “No group of private individuals.”

*Second.* In 1963, President Kennedy called on the Congress to implement the 14th Amendment, with reference *inter alia* to equal accommodations in facilities open to the general public (H.R. Doc. 124, 88th Cong., 1st sess., pp. 3-5, 6), and Congress did so in the Civil Rights Act of 1964 (Pub. L. 88-352, 78 Stat. 241).

We pause to note the support given by this Court to Congressional determinations in the civil rights enforcement area. *South Carolina v. Katzenbach*, 383 U.S. 301; *Allen v. State Board of Elections*, 393 U.S. 544; *Katzenbach v. Morgan*, 384 U.S. 641; *Cardona v. Power*, 384 U.S. 672; *Gaston County v. United States*, 395 U.S. 285; *Perkins v. Matthews*, No. 46, January 14, 1971, cf. *Oregon v. Mitchell* and related cases, Nos. 43, 44, 46, 47, Orig., December 21, 1970—and we cite Fourteenth and Fifteenth Amendment cases interchangeably because of the identity of the enforcement provisions, Section 5 of the former and Section 2 of the latter.

The Congressional standard for equal treatment, set forth no less than ten times in four titles of the measure just mentioned, the Civil Rights Act of 1964, forbids

discrimination on four stated grounds: "race, color, religion or national origin."<sup>1</sup>

"Sex" was named in Title VII, Equal Employment Opportunity, as an additional area of forbidden discrimination (eight subdivisions of § 703 and in § 704(b)(2); 42 U.S.C. §§ 2000e-2, 2000e-3(b)), while "religion" as an improper differentiation was omitted in Sections 601, 703(e), and 801 (42 U.S.C. §§ 2000d, 2000e-2(e), 2000f), the latter adding "political party affiliation" as a prohibited inquiry. The absence of "religion" in Sections 601 and 703(e) of course reflected only the parochial school and sectarian college problem; cf. *Flast v. Cohen*, 392 U.S. 83; *Board of Education v. Allen*, 392 U.S. 236; *Pierce v. Society of Sisters*, 268 U.S. 510.

Yet the court below, without once speaking of or even intimating reliance on the differentiation for sectarian education, found a distinction between racial and religious discrimination in a wholly secular fraternal body, striking down the first but supporting the second. Poise is likely to be lost in contemplating a result so obviously grotesque.<sup>2</sup>

*Third.* The court below disregarded Congressionally established boundaries in still another aspect, the

<sup>1</sup> Sections 201(a), 202, 301(a), 401(b), 402, 407(a)(2), 410, and 504(a) (amending three subdivisions of § 101(a) of the Civil Rights Act of 1957); 42 U.S.C. §§ 2000a(a), 2000a-1, 2000b(a), 2000c(b), 2000e-1 [listed but not codified], 2000e-6(a)(2), 2000e-9, 1975e(a)(1)-(3).

<sup>2</sup> Under the ruling sought to be reviewed, every private club desirous of retaining its liquor license will be well advised to employ sophisticated, not to say learned, bartenders; a black guest who has embraced Judaism (e.g., Sammy Davis, Jr., the well known television personality) may not be denied service on the ground of being a Negro—but he may be turned down with impunity provided refusal is rested on the fact that he is a Jew.

exemption for private clubs in Section 201(e) of the Civil Rights Act of 1964 (*infra*, p. A16):

"The provisions of this title [Title II, Injunctive Relief against Discrimination in Places of Public Accommodation] shall not apply to a private club or other establishment not in fact open to the public, except to the extent that the facilities of such establishment are made available to the customers or patrons of an establishment within the scope of subsection (h)."

That exemption, which was in the bill as introduced, and which was continued in every draft up to and including the enactment as ultimately enrolled,<sup>3</sup> gives effect to countervailing constitutional rights, the rights to privacy and to freedom of association.

As expressed by three members of the Court in *Bell v. Maryland*, 378 U.S. 226, 313 (footnote omitted),

"\* \* \* the Congress that enacted the Fourteenth Amendment was particularly conscious that the 'civil' rights of man should be distinguished from his 'social' rights. Prejudice and bigotry in any form are regrettable, but it is the constitutional right of every person to close his home or club to any person or to choose his social intimates and business partners solely on the basis of personal prejudices including race. These and other rights pertaining to privacy and private association are themselves constitutionally protected liberties."

See also *Evans v. Newton*, 382 U.S. 296 at 298, where the same rights are recognized.

<sup>3</sup> H.R. 7152 as introduced, § 202(b); H.R. 7152 as reported to the House on November 20, 1963, § 201(e). Neither the substance nor the numbering of the private club exemption was further changed.



The right of association fails only in respect of activities conducted for profit, or that are open to the public generally. See H.R. Doc. 124, 88th Cong., 1st sess., pp. 3-5; H.R. Rep. 914, 88th Cong., 1st sess., p. 21 (§ 201(e)); *id.*, Part 2, p. 9.

In the present case the status of appellant Moose Lodge No. 107 as a bona fide private club has never been questioned by any party at any time, much less by the court below.

There is here no question of Moose Lodge No. 107 being open to all comers following public solicitation of patronage, as in *Daniel v. Paul*, 395 U.S. 298, nor of a transparent subterfuge labeling as private what in actual fact is plainly public (e.g., *United States v. Richberg*, 398 F.2d 523 (C.A. 5)), nor of an organization whose membership is in every realistic sense non-restrictive and therefore not truly private (e.g., *Stout v. YMCA*, 404 F.2d 687 (C.A. 5); *Nesmith v. W.M.C.A.*, 397 F.2d 96 (C.A. 4)), nor of a situation where the apparently private club is actually a commercial venture (*Bell v. Kenwood Golf & Country Club*, 312 F. Supp. 753, 758, 759 (D. Md.)).

Here, quite to the contrary, Moose Lodge No. 107 is, in law and in fact both, a bona fide private club in every conceivable respect.

*Fourth.* The least untenable ground taken in the opinion below, at least superficially, is that enforcement of the Board's Regulation 113.09 (Appendix F at p. 148), which affirmatively requires that "Every club licensee shall adhere to all the provisions of its Constitution and By-laws," when read together with the Supreme Lodge's exclusion of non-Caucasian members, amounts to state action that fosters and indeed



directs discrimination (*infra*, pp. A8-A9, quoted above at p. 8).

Closer examination of Pennsylvania's liquor laws, however, shows that the Commonwealth's purpose is wholly different.

The Pennsylvania Liquor Control Board's Regulation 113 (Clubs: Records Required; Catering; Appendix F at pp. 147-149) has a double background.

First, Pennsylvania permits sales of liquor by private clubs at times and on days when such sales cannot be made by commercial dispensers. See Sections 406(a), 492(5), and 492(7); Appendix F at pp. 25-26, 67, and 68.

Second, unless private clubs are required strictly to enforce their constitutions and by-laws, subterfuges are inevitable, and places of public accommodation will masquerade as clubs while in fact having no membership requirements whatever (E.g., *United States v. Richberg*, 398 F.2d 523 (C.A. 5); *United States v. Jack Sabin's Private Club*, 265 F. Supp. 90 (E.D. La.); *United States v. Jordan*, 302 F. Supp. 370 (E.D. La.)), thus permitting evasion of closing hour requirements.

Consequently, fairly construed, the regulation seized on by the court below as a touchstone of state action is in reality only an appropriate means of enforcing Pennsylvania's differentiation between places of public accommodation and bona fide clubs. And, in addition, it qualifies as a well-adapted means of enforcing the "not in fact open to the public" distinction in the private club exemption contained in § 201(e) of the Civil Rights Act of 1964 (*infra*, Appendix E, p. A16).

But even assuming that the regulation in question is to be read literally in disregard of its obvious objective,

and that it is held to involve state action, the result reached below is still wrong; on either of two additional grounds.

First, the regulation can and in our view should be regarded as giving effect to the constitutionally protected rights of privacy and of association that are exemplified by the existence and operation of every private club.

Or, second, and this is perhaps a more simple solution in the sense of not requiring any balancing of competing interests, the decree can and should be fashioned so as to enjoin enforcement of that particular regulation insofar as it purports to implement discriminatory qualifications for membership. Then the state is not even arguably in the position of supporting any restrictive membership provision of any kind in even the most private of private associations.

*Fifth.* The right of association is a broad one, not narrowly limited to meeting with one's fellows on the street, or simply to withholding membership lists from public scrutiny. It is "the right of the individual to pick his own associates so as to express his preferences and dislikes, and to fashion his private life by joining such clubs and groups as he chooses." *Evans v. Newton*, 382 U.S. 296, 298.

A club, necessarily, encompasses facilities for food and drink, else it would be but a barren barracks. A club bar, accordingly, is a social nexus—but it is more: As a realistic matter it is the bar that offsets the invariable restaurant deficit, and that makes possible virtually every club's continued existence. Consequently to deny a club a liquor license is to doom that club to die.

It follows that the ruling appealed from effectively destroys the great majority of private social clubs in this country.

### CONCLUSION

The decision below rests on grounds that cannot be supported, and the questions presented are substantial. This Court should therefore take jurisdiction of the present appeal.

Respectfully submitted.

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FEBRUARY 1971.



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APPENDIX A

OPINION BELOW

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

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CIVIL ACTION No. 69-107

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K. LEROY IRVIS, *Plaintiff*

v.

WILLIAM Z. SCOTT, Chairman,  
EDWIN WINNER, Member, and  
GEORGE R. BORTZ, Member,  
LIQUOR CONTROL BOARD, COMMONWEALTH OF PENNSYLVANIA

and

MOOSE LODGE No. 107,  
Harrisburg, Pennsylvania, *Defendants.*

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Before FREEDMAN, *Circuit Judge*, SHERIDAN, *Chief Judge*,  
and NEALON, *District Judge.*

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**Opinion**

(Filed October 8, 1970)

FREEDMAN, *Circuit Judge:*

The facts in this case are undisputed. They are drawn from the pleadings and stipulations of the parties.

Defendant Moose Lodge No. 107 is a non-profit corporation organized under the laws of Pennsylvania. It is a subordinate lodge chartered by the Supreme Lodge of the World, Loyal Order of Moose, a non-profit corporation

organized under the laws of Indiana, which we permitted to intervene and argue as *amicus curiae*. The local Lodge conducts all its activities in Harrisburg in a building which it owns. It has never been the recipient of public funds. It is the holder of a club liquor license issued by the defendant Liquor Control Board of the Commonwealth of Pennsylvania, pursuant to the provisions of the Pennsylvania Liquor Code, Act of April 12, 1951, P.L. 90, as amended.<sup>1</sup>

Under its charter from the Supreme Lodge the local Lodge is bound by the constitution and general by-laws of the Supreme Lodge.<sup>2</sup> The Constitution of the Supreme Lodge provides: "The membership of the lodges shall

<sup>1</sup> 47 Purdon's Pa. Stat. Annot. §§ 1-101 et seq.

<sup>2</sup> The objects and purposes of the local Lodge are set forth in the Constitution of the Supreme Lodge as follows:

"The objects and purposes of said fraternal and charitable lodges, chapters, and other units are to unite in the bonds of fraternity, benevolence, and charity all acceptable white persons of good character; to educate and improve their members and the families of their members, socially, morally, and intellectually; to assist their members and their families in time of need; to aid and assist the aged members of the said lodges, and their wives; to encourage and educate their members in patriotism and obedience to the laws of the country in which such lodges or other units exist, and to encourage tolerance of every kind; to render particular service to orphaned or dependent children by the operation of one or more vocational, educational institutions of the type and character of the institution called 'Mooseheart,' and located at Mooseheart, in the State of Illinois; to serve aged members and their wives in a special and unusual way at one or more institutions of the character and type of the place called 'Moosehaven,' located at Orange Park, in the State of Florida; to create and maintain foundations, endowment funds, or trust funds, for the purpose of aiding and assisting in carrying on the charitable and philanthropic enterprises heretofore mentioned; provided, however, that the corporation may act as trustee in the administration of such trust funds, with authority to use the interest therefrom and, in cases of emergency, the principal as well, for the perpetuation of Mooseheart and Moosehaven or either of them."



be composed of male persons of the Caucasian or White race above the age of twenty-one years, and not married to someone other than the Caucasian or White race, who are of good moral character, physically and mentally normal, who shall profess a belief in a Supreme Being. . . .<sup>3</sup> The lodges accordingly maintain a policy and practice of restricting membership to the Caucasian race and permitting members to bring only Caucasian guests on lodge premises, particularly to the dining room and bar.<sup>4</sup>

On Sunday, December 29, 1968, a Caucasian member in good standing brought plaintiff, a Negro, to the Lodge's dining room and bar as his guest and requested service of food and beverages. The Lodge through its employees refused service to plaintiff solely because he is a Negro.

Plaintiff complained of the refusal of service to the Pennsylvania Human Relations Commission, which upheld his complaint. The Commission held that the dining room was a "place of public accommodation," within the definition of the Pennsylvania Human Relations Act of February 28, 1961, P.L. 47,<sup>5</sup> and that the local Lodge had been guilty of discrimination against defendant. On appeal by the local Lodge the Court of Common Pleas of Dauphin County reversed the Commission and held that the dining room was not a place of public accommodation within the meaning of the Act.<sup>6</sup>

In the meanwhile plaintiff brought this action in the District Court for the Middle Section of Pennsylvania, and this three-judge court was constituted under 28 U.S.C. § 2281 to determine whether the issuance or renewal by the

<sup>3</sup> Section 71-1.

<sup>4</sup> Section 92.2 of the Constitution of the Supreme Lodge permits members to invite non-members, apparently without limitation, to social clubs maintained by a lodge. Under § 92.6 only a member may make any purchase.

<sup>5</sup> 43 Purdon's Pa. Stat. Annot. §§ 951 et seq.

<sup>6</sup> Pennsylvania Human Relations Commission v. The Loyal Order of Moose, Lodge No. 107, — Pa. D. & C. 2d — (C.P. Dauphin County, March 6, 1970).

Pennsylvania Liquor Control Board under the Pennsylvania Liquor Code of a club liquor license to the local Lodge despite its discrimination against Negroes violates the Equal Protection Clause of the Fourteenth Amendment.

Racial discrimination is undisputed in this case. It was not only practiced against plaintiff by the local Lodge but is required by the constitution of the Supreme Lodge.

The question in the case, therefore, is focused on whether the admitted discrimination by the local Lodge in refusing to service plaintiff a drink of liquor because of his race bore the attributes of state action and so falls within the prohibition of the Fourteenth Amendment against the denial by a state of the equal protection of the laws.

The boundaries which define what is state action are not always clear.<sup>7</sup> This case presents a situation which is one of first impression. It comes to us surrounded by a mass of decisions which can serve as guides, although they do not authoritatively direct our conclusion.<sup>8</sup>

<sup>7</sup> "Because the virtue of the right to equal protection of the laws could lie only in the breadth of its application, its constitutional assurance was reserved in terms whose imprecision was necessary if the right were to be enjoyed in the variety of individual-state relationships which the Amendment was designed to embrace. For the same reason, to fashion and apply a precise formula for recognition of state responsibility under the Equal Protection Clause is an 'impossible task' which 'This Court has never attempted.' *Kotch v. Pilot Comm'rs*, 330 U.S. 552, 556. Only by sifting facts and weighing circumstances could the nonobvious involvement of the State in private conduct be attributed its true significance." *Burton v. Wilmington Parking Authority*, 365 U.S. 715, 722 (1961).

<sup>8</sup> A few of the leading discussions of the subject of state action are *Developments in the Law: Equal Protection*, 82 Harv. L. Rev. 1065 (1969); Black, *Forward: "State Action, Equal Protection, and California's Proposition 14,"* 81 Harv. L. Rev. 69 (1968); Paulsen, *The Sit-In Cases of 1964: "But Answer Came There None,"* 1964 Sup. Ct. Rev. 137 (1964); Henkin, *Shelley v. Kraemer: Notes for a Revised Opinion*, 110 U. Pa. L. Rev. 473 (1962); Lewis, *The Meaning of State Action*, 60 Colum. L. Rev. 1083 (1960).

We believe the decisive factor is the uniqueness and the all-pervasiveness of the regulation by the Commonwealth of Pennsylvania of the dispensing of liquor under licenses granted by the state. The regulation inherent in the grant of a state liquor license is so different in nature and extent from the ordinary licenses issued by the state that it is different in quality.

It had always been held in Pennsylvania, even prior to the Eighteenth Amendment, that the exercise of the power to grant licenses for the sale of intoxicating liquor was an exercise of the highest governmental power, one in which the state had the fullest freedom inhering in the police power of the sovereign.<sup>9</sup> With the Eighteenth Amendment which went into effect in 1919 the right to deal in intoxicating liquor was extinguished. The era of Prohibition ended with the adoption in 1933 of the Twenty-first Amendment, which has left to each state the absolute power to prohibit the sale, possession or use of intoxicating liquor, and in general to deal otherwise with it as it sees fit.<sup>10</sup>

Pennsylvania has exercised this power with the fullest measure of state authority. Under the Pennsylvania plan the state monopolizes the sale of liquor through its so-

<sup>9</sup> *Tahiti Bar, Inc. Liquor License Case*, 395 Pa. 355, 150 A.2d 112, appeal dismissed, 361 U.S. 85 (1959); *Cavanaugh v. Gelder*, 364 Pa. 361, 72 A.2d 713 (1950); *Spankard's Liquor License Case*, 138 Pa. Super. 251, 10 A.2d 899 (1940); *Commonwealth v. One Dodge Motor Truck*, 123 Pa. Super. 311, 187 A. 461 (1936). See also *Goesaert v. Cleary*, 335 U.S. 464, 465 (1948) ("The regulation of the liquor traffic is one of the oldest and most untrammelled of legislative powers. . ."); *Crane v. Campbell*, 245 U.S. 306 (1917); *Mugler v. Kansas*, 123 U.S. 623 (1887) and *License Cases*, 46 U.S. (5 How.) 504 (1847).

<sup>10</sup> See, e.g., *Seagram & Sons, Inc. v. Hostetter*, 384 U.S. 35, 42 (1966); *Hostetter v. Idlewild Bon Voyage Liquor Corp.*, 377 U.S. 324, 330 (1964); *Ziffrin, Inc. v. Reeves*, 308 U.S. 132, 138 (1939); *State Board v. Young's Market Co.*, 299 U.S. 59 (1936). See generally, Note, *The Evolving Scope of State Power Under the Twenty-first Amendment*, 19 Rutgers L.Rev. 759 (1965).

called state stores, operated by the state. Resale of liquor is permitted by hotels, restaurants and private clubs, which must obtain licenses from the Liquor Control Board, authorizing them "to purchase liquor from a Pennsylvania Liquor Store [at a discount] and keep on the premises such liquor and, subject to the provisions of this Act and the regulations made thereunder to sell the same and also malt or brewed beverages to guests, patrons or members for consumption on the hotel, restaurant or club premises."<sup>11</sup>

The issuance or refusal of a license to a club is in the discretion of the Liquor Control Board.<sup>12</sup> In order to secure one of the limited number of licenses which are available in each municipality,<sup>13</sup> an applicant must comply with extensive requirements, which in general are applicable to commercial and club licenses equally. The applicant must make such physical alterations in his premises as the Board may require and, if a club, must file a list of the names and addresses of its members and employees, together with such other information as the Board may require.<sup>14</sup> He must conform his overall financial arrangements to the statute's exacting requirements<sup>15</sup> and keep extensive records.<sup>16</sup> He may not permit "persons of ill repute" to frequent his premises<sup>17</sup> nor allow thereon at any time any "lewd, immoral or improper entertain-

<sup>11</sup> 47 Purdon's Pa. Stat. Annot. § 4-401(a).

<sup>12</sup> 47 Purdon's Pa. Stat. Annot. § 4-404.

<sup>13</sup> See 47 Purdon's Pa. Stat. Annot., § 4-461, as amended, and § 4-472.1. When the quota for commercial licenses is reached in a municipality, no new club license can be issued there even if a club license already granted is eliminated.

<sup>14</sup> 47 Purdon's Pa. Stat. Annot. § 4-403. See also § 1-102, "club."

<sup>15</sup> See, e.g., 47 Purdon's Pa. Stat. Annot. § 4-411 and § 4-493.

<sup>16</sup> See, e.g., 47 Purdon's Pa. Stat. Annot. § 4-493(12).

<sup>17</sup> 47 Purdon's Pa. Stat. Annot. § 4-493(14).

ment."<sup>18</sup> He must grant the Board and its agents the right to inspect the licensed premises at any time when patrons, guests or members are present.<sup>19</sup> It is only on compliance with these and numerous other requirements and if the Board is satisfied that the applicant is "a person of good repute" and that the license will not be "detrimental to the welfare, health, peace and morals of the inhabitants of the neighborhood," that the license may issue.<sup>20</sup>

Once a license has been issued the licensee must comply with many detailed requirements or risk its suspension or revocation. He must in any event have it renewed periodically. Liquor licenses have been employed in Pennsylvania to regulate a wide variety of moral conduct, such as the presence and activities of homosexuals,<sup>21</sup> performance by a topless dancer,<sup>22</sup> lewd dancing,<sup>23</sup> swearing,<sup>24</sup> being noisy or disorderly.<sup>25</sup> So broad is the state's power that the courts of Pennsylvania have upheld its restriction of freedom of expression of a licensee on the ground that in doing so it merely exercises its plenary power to attach conditions to the privilege of dispensing liquor which a licensee holds at the sufferance of the state.<sup>26</sup>

<sup>18</sup> 47 Purdon's Pa. Stat. Annot. § 4-493(10).

<sup>19</sup> 47 Purdon's Pa. Stat. Annot. § 4-493(21).

<sup>20</sup> 47 Purdon's Pa. Stat. Annot. § 4-404.

<sup>21</sup> Freeman Liquor License Case, 211 Pa. Super. 132, 235 A.2d 625 (1967).

<sup>22</sup> Scarzia Appeal, 46 Pa. D. & C. 2d 742 (C.P. Lehigh Co. 1968).

<sup>23</sup> Golden Bar, Inc. Liquor License Case No. 2, 193 Pa. Super. 404, 165 A.2d 287 (1960).

<sup>24</sup> Reiter Liquor License Case, 173 Pa. Super. 552, 554, 98 A.2d 465, 467 (1953).

<sup>25</sup> Petty Liquor License Case, 216 Pa. Super. 55, 258 A.2d 874 (1969), and cases there cited.

<sup>26</sup> Tahiti Bar, Inc. Liquor License Case, 395 Pa. 355, 360-62, 150 A.2d 112, 115-16, appeal dismissed 361 U.S. 85 (1959).

These are but some of the many reported illustrations of the use which the state has made of its unrestricted power to regulate and even to deny the right to sell, transport or possess intoxicating liquor. It would be difficult to find a more pervasive interaction of state authority with personal conduct. The holder of a liquor license from the Commonwealth of Pennsylvania therefore is not like other licensees who conduct their enterprises at arms-length from the state, even though they may have been required to comply with certain conditions, such as zoning or building requirements, in order to obtain or continue to enjoy the license which authorizes them to engage in their business. The state's concern in such cases is minimal and once the conditions it has exacted are met the customary operations of the enterprise are free from further encroachment. Here by contrast beyond the act of licensing is the continuing and pervasive regulation of the licensees by the state to an unparalleled extent. The unique power which the state enjoys in this area, which has put it in the business of operating state liquor stores and in the role of licensing clubs, has been exercised in a manner which reaches intimately and deeply into the operation of the licensees.

In addition to this, the regulations of the Liquor Control Board adopted pursuant to the statute affirmatively require that "every club licensee shall adhere to all the provisions of its constitution and by-laws."<sup>27</sup> As applied to the present case this regulation requires the local Lodge to adhere to the constitution of the Supreme Lodge<sup>28</sup> and thus to exclude non-Caucasians from membership in its licensed club. The state therefore has been far from neutral. It has declared that the local Lodge must adhere

<sup>27</sup> Regulations, § 113.09.

<sup>28</sup> As stipulated by the parties, Local Lodge No. 107 has no constitution or by-laws other than those of the Supreme Lodge, by which the local lodge is expressly governed under its charter.



to the discriminatory provision under penalty of loss of its license. It would be difficult in any event to consider the state neutral in an area which is so permeated with state regulation and control, but any vestige of neutrality disappears when the state's regulation specifically exacts compliance by the licensee with an approved provision for discrimination, especially where the exaction holds the threat of loss of the license.

However it may deal with its licensees in exercising its great and untrammelled power over liquor traffic, the state may not discriminate against others or disregard the operation of the Equal Protection Clause of the Fourteenth Amendment as it affects personal rights.<sup>29</sup> Here the state has used its great power to license the liquor traffic in a manner which has no relation to the traffic in liquor itself but instead permits it to be exploited in the pursuit of a discriminatory practice. Here then are fully applicable the words of the Supreme Court in *Burton v. Wilmington Parking Authority*, 365 U.S. 715, 725 (1961), where discrimination by a coffee shop lessee in the municipal parking authority's garage building was held to be state action:

"[I]n its lease with Eagle the Authority could have affirmatively required Eagle to discharge the responsibilities under the Fourteenth Amendment imposed upon the private enterprise as a consequence of state participation. But no State may effectively abdicate its responsibilities by either ignoring them or by merely failing to discharge them whatever the motive may be. . . . By its inaction, the Authority, and through it

<sup>29</sup> *Goesaert v. Cleary*, 335 U.S. 464, 466 (1948). See, e.g., *Parks v. Allen*, 409 F.2d 210 (5 Cir. 1969); *Atlanta Bowling Center, Inc. v. Allen*, 389 F.2d 713 (5 Cir. 1968); *Lewis v. City of Grand Rapids*, 356 F.2d 276 (6 Cir. 1966); *Seidenberg v. McSorleys' Old Ale House, Inc.* — F. Supp. — (S.D.N.Y. 1970). See generally, *Provisions of Statute Regarding Personal Qualifications Necessary to Entitle One to License for Sale of Intoxicating Liquor: As Denial of Equal Protection of Laws*, 145 A.L.R. 509 (1943).

the State, has not only made itself a party to the refusal of service, but has elected to place its power, property and prestige behind the admitted discrimination. The State has so far insinuated itself into a position of interdependence with Eagle that it must be recognized as a joint participant in the challenged activity, which, on that account, cannot be considered to have been so 'purely private' as to fall without the scope of the Fourteenth Amendment."<sup>30</sup>

As in *Burton* the state has "insinuated itself into a position of interdependence" with its club licensees, and as in *Shelley v. Kraemer*, 334 U.S. 1 (1948), it has undertaken to enforce the privately promulgated constitutional provisions of the club establishing discrimination.

<sup>30</sup> See *Evans v. Newton*, 382 U.S. 296, 299 (1966) ("Conduct that is formally 'private' may become so entwined with governmental policies or so impregnated with a governmental character as to become subject to the constitutional limitations placed upon state action. . . . That is to say, when private individuals or groups are endowed by the State with powers or functions governmental in nature, they become agencies or instrumentalities of the State and subject to its constitutional limitations."). See the discussion of *Burton*, *Evans* and related decisions in *Reitman v. Mulkey*, 387 U.S. 369, 378-81 (1967) and in *United States v. Guest*, 383 U.S. 745, 755-56 (1966) ("In a variety of situations the Court has found state action of a nature sufficient to create rights under the Equal Protection Clause even though the participation of the State was peripheral, or its action was only one of several co-operative forces leading to the constitutional violation.") See also, e.g., *Turner v. City of Memphis*, 369 U.S. 350, 353 (1962); *Pennsylvania v. Brown*, 392 F.2d 120 (3 Cir.), cert. denied 391 U.S. 921 (1968); *Smith v. Hampton Training School for Nurses*, 360 F.2d 577 (5 Cir. 1966); *Wimbish v. Pinellas County, Florida*, 342 F.2d 804 (5 Cir. 1965); *Smith v. Holiday Inns of America, Inc.*, 336 F.2d 630 (6 Cir. 1964); *Simkins v. Moses H. Cone Memorial Hospital*, 323 F.2d 959 (5 Cir. 1963).

See generally Karst & Horowitz, *Reitman v. Mulkey: A Telophase of Substantive Equal Protection*, 1967 Sup. Ct. Rev. 39, 55-79 (1967); Peters, *Civil Rights and State Non-Action*, 34 Notre Dame Lawyer 303 (1959).

There is no question here of interference with the right of members of the Moose Lodge to associate among themselves in harmony with their private predilections. The state, however, may not confer upon them in doing so the authority which it enjoys under its police power to engage in the sale or distribution of intoxicating liquors, under a grant from the state which is conditioned in this case on the club's adherence to the requirement of its constitution and customs that it must practice discrimination and refuse membership or service because of race.

Nothing in what we here say implies a judgment on private clubs which limit participation to those of a shared religious affiliation or a mutual heritage in national origin. Such cases are not the same as the present one where discrimination is practiced solely on racial grounds and therefore collides head-on against the "clear and central purpose of the Fourteenth Amendment . . . to eliminate all official state sources of invidious racial discrimination in the States." *Loving v. Virginia*, 388 U.S. 1, 10 (1967); and cases there cited.

We therefore hold that the club license granted by the Liquor Control Board of the Commonwealth of Pennsylvania to the Moose Lodge No. 107 is invalid because it is in violation of the Equal Protection Clause of the Fourteenth Amendment of the Federal Constitution.

An appropriate form of decree may be submitted.

/s/ ABRAHAM L. FREEDMAN  
Abraham L. Freedman,  
*Circuit Judge*

/s/ MICHAEL H. SHERIDAN  
Michael H. Sheridan,  
*Chief Judge*

/s/ WILLIAM J. NEALON  
William J. Nealon, Jr.,  
*District Judge*

APPENDIX B

JUDGMENT BELOW

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

CIVIL ACTION No. 69-107

K. LEROY IRVIS, *Plaintiff*

v.

WILLIAM Z. SCOTT, *Chairman*,  
EDWIN WINNER, *Member*, and  
GEORGE R. BORTZ, *Member*,

LIQUOR CONTROL BOARD, COMMONWEALTH OF PENNSYLVANIA

and

MOOSE LODGE No. 107,  
Harrisburg, Pennsylvania, *Defendants*.

**Final Decree**

AND NOW, this 13th day of November, 1970, pursuant to the Opinion filed in this case on October 8, 1970, it is hereby ordered and decreed as follows:

1. The club liquor license presently held by defendant Moose Lodge No. 107 and issued to it by the Pennsylvania Liquor Control Board under the Pennsylvania Liquor Code is hereby adjudged and declared invalid because it is in violation of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

2. Defendants, the Pennsylvania Liquor Control Board, its members, William Z. Scott, Chairman, Edwin Winner and George R. Bortz, and their successors, are hereby directed forthwith to terminate and cancel the club liquor

license issued by the Board to defendant Moose Lodge No. 107.

3. Defendants, the Pennsylvania Liquor Control Board, its members, William Z. Scott, Chairman, Edwin Winner and George R. Bortz, and their successors, are hereby permanently enjoined and restrained from issuing any club liquor license to defendant Moose Lodge No. 107 as long as it follows a policy of racial discrimination in its membership or operating policies or practices.

4. Any party at any time may apply for modification of this decree.

5. Execution and enforcement of this decree is hereby stayed for a period of sixty (60) days.

/s/ ABRAHAM L. FREEDMAN  
Abraham L. Freedman,  
*Circuit Judge*

/s/ MICHAEL H. SHERIDAN  
Michael H. Sheridan,  
*Chief Judge*

/s/ WILLIAM J. NEALON  
William J. Nealon,  
*District Judge*

**APPENDIX C**  
**ORDER DENYING MODIFICATION**  
IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Civil Action No. 69-107

K. LEROY IRVIS, *Plaintiff.*

v.

WILLIAM Z. SCOTT, *Chairman*  
EDWIN WINNER, Member, and  
GEORGE R. BORTZ, Member,  
LIQUOR CONTROL BOARD  
COMMONWEALTH OF PENNSYLVANIA

and

MOOSE LODGE No. 107,  
Harrisburg, Pennsylvania, *Defendants.*

**Order**

AND Now, this 5th day of January, 1971, the motion of defendant Moose Lodge No. 107 to modify the final decree is hereby denied.

/s/ ABRAHAM L. FREEDMAN,  
Abraham L. Freedman,  
Circuit Judge

/s/ MICHAEL H. SHERIDAN,  
Michael H. Sheridan,  
Chief Judge

/s/ WILLIAM J. NEALON,  
William J. Nealon, Jr.,  
District Judge



**APPENDIX D**  
**NOTICE OF APPEAL**

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Civil Action No. 69-107

K. LEROY IRVIS, *Plaintiff.*

v.

WILLIAM Z. SCOTT, *Chairman*  
EDWIN WINNER, *Member, and*  
GEORGE R. BORTZ, *Member,*  
LIQUOR CONTROL BOARD  
COMMONWEALTH OF PENNSYLVANIA  
and

MOOSE LODGE No. 107,  
Harrisburg, Pennsylvania, *Defendants.*

**Notice of Appeal to the Supreme Court of the United States**

1. Notice is hereby given that MOOSE LODGE No. 107, Harrisburg, Pennsylvania, one of the defendants above named, hereby appeals to the Supreme Court of the United States from the final decree entered in this action on November 13, 1970.

2. This appeal is taken pursuant to 28 U.S.C. §§ 1253 and 2101(b).

Dated this 4th day of January 1971.

/s/ THOMAS D. CALDWELL, JR.  
Thomas D. Caldwell, Jr.,  
Caldwell, Clouser & Kearns,  
123 Walnut Street,  
Harrisburg, Pa. 17101

*Attorney for Defendant Moose  
Lodge No. 107.*

[Certificate of Service omitted]

## APPENDIX E

CONSTITUTIONAL PROVISION AND FEDERAL  
STATUTE INVOLVED

1. Section 1 of the Fourteenth Amendment provides as follows:

"SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

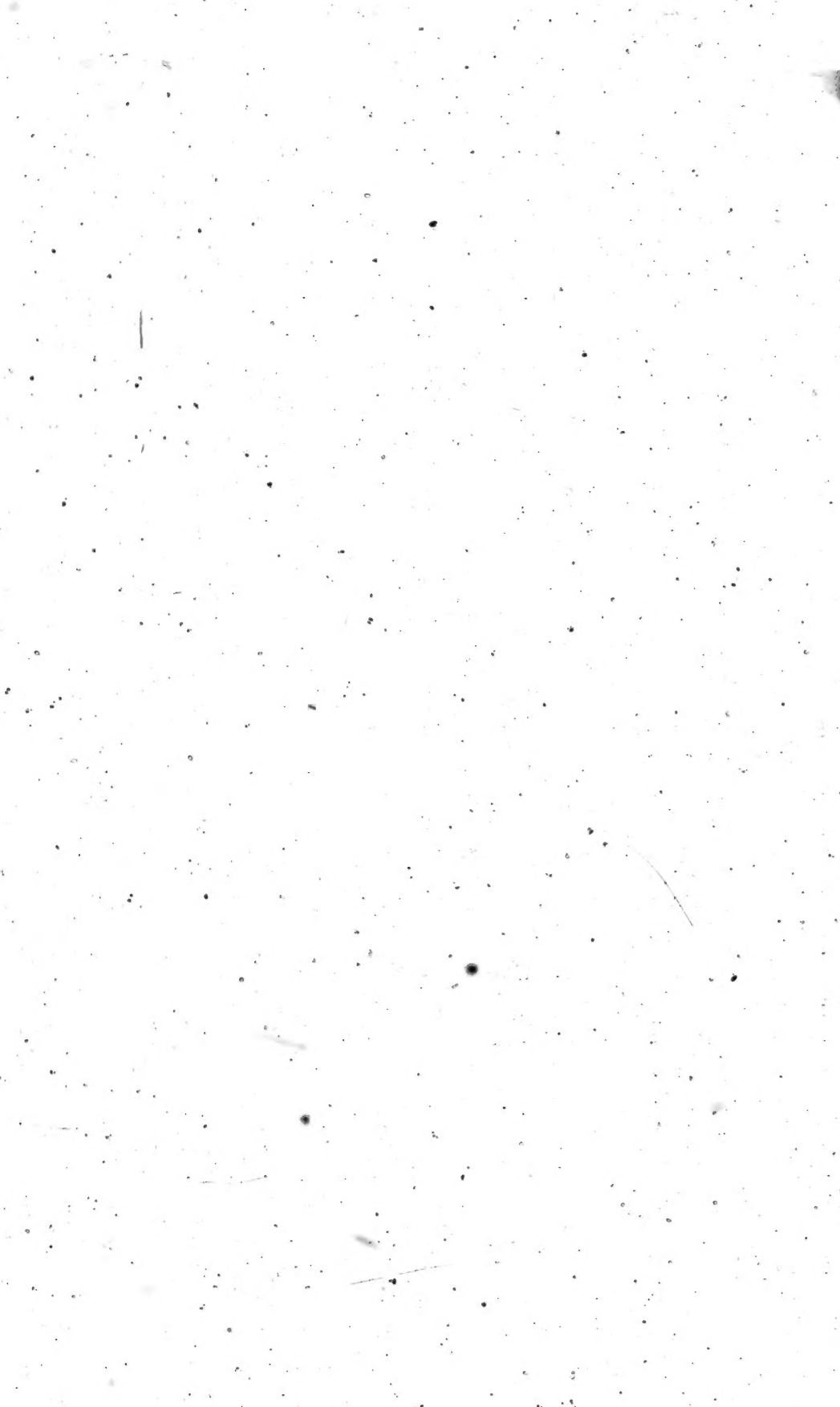
2. Section 201(e) of the Civil Rights Act of 1964 (42 U.S.C. 2000a(e)) provides as follows:

**"TITLE II — INJUNCTIVE RELIEF AGAINST  
DISCRIMINATION IN PLACES OF PUBLIC AC-  
COMMODATION"**

**"Sec. 201. \* \* \***

**"(e) The provisions of this title shall not apply to a private club or other establishment not in fact open to the public, except to the extent that the facilities of such establishment are made available to the customers or patrons of an establishment within the scope of subsection (b)."**





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Supreme Court, U.S.

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IN THE

**Supreme Court of the United States**

OCTOBER TERM, 1970

No.

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70-75

MOOSE LODGE No. 107, *Appellant*,

v.

K. LEROY IRVIS, and WILLIAM Z. SCOTT, Chairman, EDWIN  
WINNER, Member, and GEORGE R. BORTZ, Member,  
LIQUOR CONTROL BOARD, COMMONWEALTH  
OF PENNSYLVANIA

Appeal From the United States District Court for the  
Middle District of Pennsylvania

**APPENDICES F AND G TO  
JURISDICTIONAL STATEMENT**

**F—PENNSYLVANIA LIQUOR CODE AND REGULATIONS**

**G—CONSTITUTION OF SUPREME LODGE OF THE  
WORLD, LOYAL ORDER OF MOOSE**

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**PENNSYLVANIA LIQUOR CODE  
AND RELATED LAWS  
WITH  
P.L.C.B. REGULATIONS**

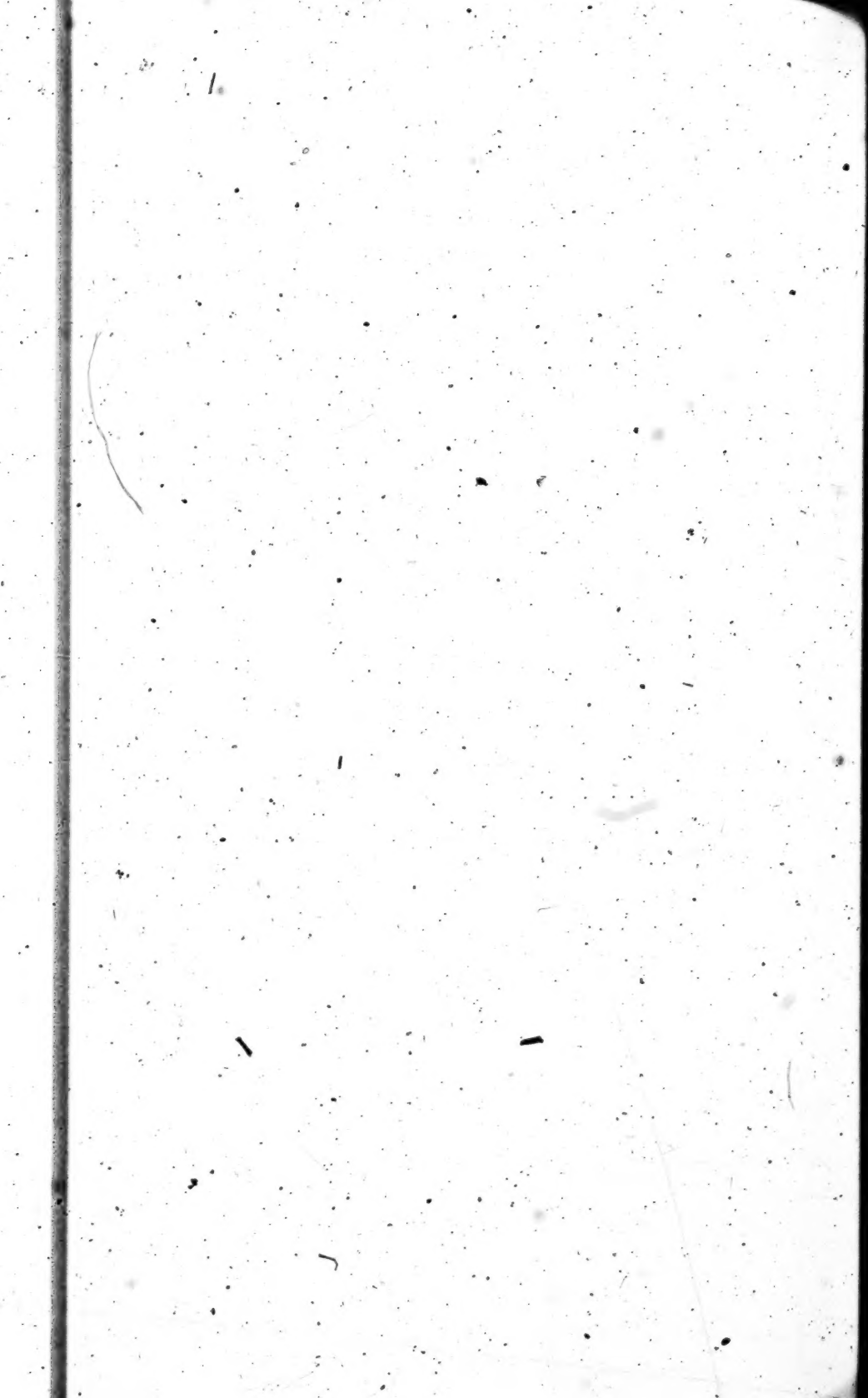


Commonwealth of Pennsylvania

**PENNSYLVANIA LIQUOR CONTROL BOARD**

**RAYMOND P. SHAFER**  
Governor

**W. Z. SCOTT, Chairman**  
**E. WINNER**  
**G. R. BORTZ**



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## FOREWORD

The following contains the complete text of the "Liquor Code" of 1951, including all amendments to June 1, 1970. Also included in this compilation are related laws pertaining to alcoholic beverage control, the Liquor Control Board Regulations and a comprehensive index.

Mr. Harold E. Wetzel, Director of the Bureau of Licensing, prepared the original compilation and index upon which the following is based.

Acknowledgement is made to Timothy L. McNickle, John L. Sampson, III, and Thomas J. Carlyon, Legal Assistants in the Board's Legal Bureau, who revised the compilation and index and to Thomas J. Shannon, Esquire, Assistant Attorney General and Counsel for the Board under whose supervision and guidance the work was done.

### PENNSYLVANIA LIQUOR CONTROL BOARD

WILLIAM Z. SCOTT, Chairman  
EDWIN WINNER  
GEORGE R. BORTZ

*Revised June, 1970*

# I. LIQUOR CODE

(Act 21 of April 12, 1951, P.L. 90; amended by Act 502 of January 14, 1952, P.L. 1863; amended by Act 504 of January 14, 1952, P.L. 1865; amended by Act 591 of January 14, 1952, P.L. 2089; amended by Act 619 of January 19, 1952, P.L. 2170; amended by Act 272 of August 19, 1953, P.L. 1061; amended by Act 382 of August 22, 1953, P.L. 1340; amended by Act 297 of January 26, 1956, P.L. 966; amended by Act 348 of February 17, 1956, P.L. 1077; amended by Act 349 of February 17, 1956, P.L. 1078; amended by Act 499 of April 20, 1956, P.L. 1508; amended by Act 533 of May 15, 1956, P.L. 1587; amended by Act 583 of May 25, 1956, P.L. 1743; amended by Act 99 of May 27, 1957, P.L. 201; amended by Act 170 of June 14, 1957, P.L. 322; amended by Act 231 of June 28, 1957, P.L. 419; amended by Act 268 of July 3, 1957, P.L. 475; amended by Act 346 of July 10, 1957, P.L. 638; amended by Act 220 of August 11, 1959, P.L. 670; amended by Act 260 of August 25, 1959, P.L. 746; amended by Act 471 of October 23, 1959, P.L. 1360; amended by Act 543 of November 19, 1959, P.L. 1532; amended by Act 553 of November 19, 1959, P.L. 1546; amended by Act 555 of November 19, 1959, P.L. 1550; amended by Act 702 of December 17, 1959, P.L. 1932; amended by Act 781 of January 7, 1960, P.L. 2106; amended by Act 18 of February 21, 1961, P.L. 45; amended by Act 211 of June 15, 1961, P.L. 423; amended by Act 244 of June 19, 1961, P.L. 482; amended by Act 245 of June 19, 1961, P.L. 484; amended by Act 269 of July 10, 1961, P.L. 554; amended by Act 275 of July 10, 1961, P.L. 561; amended by Act 347 of July 18, 1961, P.L. 789; amended by Act 348 of July 18, 1961, P.L. 790; amended by Act 381 of July 26, 1961, P.L. 886; amended by Act 456 of August 21, 1961, P.L. 1015; amended by Act 495 of August 23, 1961, P.L. 1115; amended by Act 583 of September 15, 1961, P.L. 1325; amended by Act 590 of September 16, 1961, P.L. 1337; amended by Act 639 of September 19, 1961, P.L. 1507; amended by Act 642 of September 20, 1961, P.L. 1513; amended by Act 663 of September 21, 1961, P.L. 1579; amended by Act 676 of September 22, 1961, P.L. 1599; amended by Act 702 of September 28, 1961, P.L. 1728; amended by Act 242 of August 1, 1963, P.L. 456; amended by Act 101 of June 29, 1965, P.L. 151; amended by Act 161 of August 10, 1965, P.L. 306; amended by Act 182 of August 17, 1965, P.L. 346; amended by Act 316 of October 21, 1965, P.L. 642; amended by Act 343 of November 10, 1965, P.L. 716; amended by Act 360 of December 1, 1965, P.L. 979; amended by Act 426 of December 16, 1965, P.L. 1106; amended by Act 441 of December 22, 1965, P.L. 1144; amended by Act 445 of December 22, 1965, P.L. 1149; amended by Act 518 of January 13, 1966, P.L. 1301; amended by Act 135 of September 25, 1967, P.L. 1149; amended by Act 177 of October 9, 1967, P.L. 1149; amended by Act 178 of October 9, 1967, P.L. 1149; amended by Act 179 of October 9, 1967, P.L. 1149; amended by Act 180 of October 9, 1967, P.L. 1149; amended by Act 183 of October 9, 1967, P.L. 1149; amended by Act 225 of October 20, 1967, P.L. 1149; amended by Act 247 of November 17, 1967, P.L. 1149; amended by Act 302 of November 30, 1967, P.L. 1149; amended by Act 432 of January 18, 1968, P.L. 1149; amended by Act 199 of July 20, 1968, P.L. 1149; amended by Act 201 of July 20, 1968, P.L. 1149; amended by Act 243 of July 31, 1968, P.L. 1149; amended by Act 272 of July 31, 1968, P.L. 1149; amended by Act 87 of August 1, 1969, P.L. 1149; amended by Act 95 of September 25, 1969, P.L. 1149; amended by Act 124 of November 18, 1969, P.L. 1149; amended by Act 154 of December 10, 1969, P.L. 1149.)

## AN ACT

Relating to alcoholic liquors, alcohol and malt and brewed beverages; amending, revising, consolidating and changing the laws relating thereto; regulating and restricting the manufacture, purchase, sale, possession, consumption, importation, transportation, furnishing, holding in bond, holding in storage, traffic in and use of alcoholic liquors, alcohol and malt and brewed beverages and the persons engaged or employed therein; defining the powers and duties of the Pennsylvania Liquor Control Board; providing for the establishment and operation of State liquor stores, for the payment of certain license fees to the respective municipalities and townships, for the abatement of certain nuisances and, in certain cases, for search and seizure without warrant; prescribing penalties and forfeitures; providing for local option, and repealing existing laws.

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The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows: "Liquor Code"

## ARTICLE I.

## PRELIMINARY PROVISIONS.

**Section 101. Short Title.**—This act shall be known and may be cited as the "Liquor Code."

**Section 102. Definitions.**—The following words or phrases, unless the context clearly indicates otherwise, shall have the meanings ascribed to them in this section: Definitions

"Alcohol" shall mean ethyl alcohol of any degree of proof originally produced by the distillation of any fermented liquid, whether rectified or diluted with or without water, whatever may be the origin thereof, and shall include synthetic ethyl alcohol, but shall not mean or include ethyl alcohol, whether or not diluted, that has been denatured or otherwise rendered unfit for beverage purposes. Alcohol

"Association" shall mean a partnership, limited partnership or any form of unincorporated enterprise owned by two or more persons. Association

"Board" shall mean the Pennsylvania Liquor Control Board. Board

"Bonded warehouse" shall mean and include all places and warehouses legally established under the provisions of the acts of Congress and the administrative provisions of the internal revenue laws of the Government of the United States of America, for the storage, concentration, distribution and holding in bond, (a) of whiskey and any other potable distilled spirits, except ethyl alcohol, when used in Article VII entitled "Distillery Bonded Warehouse Certificates" and, (b) of alcohol or liquor when otherwise used. Bonded Warehouse

"Club" shall mean any reputable group of individuals associated together not for profit for legitimate purposes of mutual benefit, entertainment, fellowship or lawful convenience, having some primary interest and activity to which the sale of liquor or malt and brewed beverages shall be only secondary, which, if incorporated, has been in continuous existence and operation for at least one year, and if first licensed after June sixteenth, one thousand nine hundred thirty-seven, shall have been incorporated in this Commonwealth, and, if unincorporated, for at least ten years, immediately preceding the date of its application for a license under this act, and which regularly occupies, as owner or lessee, a clubhouse or quarters for the use of its members. Continuous existence must be proven by satisfactory evidence. The board shall refuse to issue a license if it appears that the charter is not in possession of the original incorporators or their direct or legitimate successors. The club shall hold regular meetings, conduct its business through officers regularly elected, admit members by written application, investigation and ballot, and charge and collect dues from elected members, and maintain such records as the board shall from time to time prescribe, but any such club may waive or reduce in amount, or pay from its club funds, the dues of any person who was a Club

Period of existence

Charter

Clubs permitted to waive dues

of persons in  
military  
service

member at the time he was inducted into the military service of the United States or was enrolled in the armed forces of the United States pursuant to any selective service act during the time of the member's actual service or enrollment.

Container

"Container" shall mean and include any receptacle, vessel or form of package, tank, vat, cask, barrel, drum, keg, can, bottle or conduit used or capable of use for holding, storing, transferring or shipment of alcohol, liquor or malt or brewed beverages.

Corporation

"Corporation" shall mean a corporation or joint-stock association organized under the laws of this Commonwealth, the United States, or any other state, territory, or foreign country or dependency.

Denatured  
alcohol

"Denatured alcohol" shall mean and include all alcohol or any compound thereof which by the admixture of such denaturing material or materials is rendered unfit for use as a beverage.

Denaturing  
Plant

"Denaturing plant" shall mean and include the premises of a distillery used exclusively for the denaturization of alcohol, either specially or completely, by the admixture of such denaturing materials as shall render the alcohol or any compound in which it is authorized to be used unfit for use as a beverage.

Distillery

"Distillery" shall mean and include any premises or plant wherein alcohol or liquor is manufactured, made and distilled from raw materials, blended or rectified, or any place wherein alcohol or liquor is produced by any method suitable for the production of alcohol. The term shall not include a "winery" where alcohol is derived from by-products of wine production by distillation for the sole purpose of adding to the fermented products to fortify the same.

Distillery  
Bonded  
Warehouse  
Certificate

"Distillery Bonded Warehouse Certificate" shall mean a certificate, receipt, contract or other document given upon the storage of whiskey or any other potable distilled spirits, except ethyl alcohol, in a bonded warehouse, and evidencing the ownership of such whiskey or other potable distilled spirits.

Distillery  
Certificate  
Broker

"Distillery certificate broker" shall mean and include every person who engages directly or through an agent in selling, purchasing, exchanging, offering for sale or delivery, or entering into agreements for the purchase, sale or exchange, or soliciting subscriptions to or orders for, or undertaking to dispose of, or dealing in any manner in, distillery bonded warehouse certificates.

Distributor

"Distributor" (As amended by Act 182 of August 17, 1965, P. L. 346 ) shall mean any person licensed by the board to engage in the purchase only from Pennsylvania manufacturers and from importing distributors and the resale of malt or brewed beverages, except to importing distributors and distributors, in the original sealed containers as prepared for the market by the manufacturer at the place of manufacture, but not for consumption on the premises where sold, and in quantities of not less than a case of twenty-four containers, each container holding seven fluid ounces or more, or a case of twelve containers, each container holding twenty-four



fluid ounces or more except original containers containing one hundred twenty-eight ounces or more which may be sold separately.

"Eating place" shall mean a premise where food is regularly and customarily prepared and sold, having a total area of not less than three hundred square feet available to the public in one or more rooms, other than living quarters, and equipped with tables and chairs accommodating thirty persons at one time.

**Eating place**

"Hotel"\* shall mean any reputable place operated by responsible persons of good reputation where the public may, for a consideration, obtain sleeping accommodations and meals and which, in a city, has at least ten, and in any other place at least six, permanent bedrooms for the use of guests, a public dining room or rooms operated by the same management accommodating at least thirty persons at one time, and a kitchen, apart from the public dining room or rooms, in which food is regularly prepared for the public.

**Hotel**

"Importing distributor" (As amended by Act 182 of August 17, 1965, P. L. 346) shall mean any person licensed by the board to engage in the purchase from manufacturers and other persons located outside this Commonwealth and from persons licensed as manufacturers of malt or brewed beverages and importing distributors under this act, and the resale of malt or brewed beverages in the original sealed containers as prepared for the market by the manufacturer at the place of manufacture, but not for consumption on the premises where sold, and in quantities of not less than a case of twenty-four containers, each container holding seven fluid ounces or more, or a case of twelve containers, each container holding twenty-four fluid ounces or more except original containers containing one hundred twenty-eight ounces or more which may be sold separately.

**Importing  
Distributor**

"Limited Winery" (As added by Act 272 of July 31, 1968, P.L. ) shall mean a winery with a maximum output of fifty thousand (50,000) gallons per year.

**Limited  
Winery**

"Liquor" shall mean and include any alcoholic, spirituous, vinous, fermented or other alcoholic beverage, or combination of liquors and mixed liquor a part of which is spirituous, vinous, fermented or otherwise alcoholic, including all drinks or drinkable liquids, preparations or mixtures, and reused, recovered or redistilled denatured alcohol usable or taxable for beverage purposes which contain more than one-half of one per cent of alcohol by volume, except pure ethyl alcohol and malt or brewed beverages.

**Liquor**

"Malt or Brewed Beverages" means any beer, lager beer, ale, porter or similar fermented malt beverage containing one-half of one per centum or more of alcohol by volume, by whatever name such beverage may be called.

**Malt or  
brewed  
beverages**

"Manufacture", when the term is applied to malt or brewed beverages, shall mean and include all means, methods and processes used, employed and made use of, to produce, make and manufacture for commercial purposes, malt or brewed

**Manufacture**

\* See Section 461(c) of this Act for definition of "Hotel" when quota is exceeded in any municipality.

beverages from raw materials; when applied otherwise, it shall mean and include all means, methods and processes used, employed and made use of, to produce and make alcohol or liquor from raw materials, and shall mean and include rectification and blending of alcohol and liquor, the production, recovery or reuse of alcohol in the making, developing, using in the process of manufacture, denaturing, redistilling or recovering of any alcohol or liquor in distilleries, denaturing plants and wineries.

**Manufacturer**

"Manufacturer" shall mean any person, association or corporation engaged in the producing, manufacturing, distilling, rectifying or compounding of liquor, alcohol or malt or brewed beverages in this Commonwealth or elsewhere.

**Manufacturer of malt or brewed beverages**

"Manufacturer of malt or brewed beverages" shall mean any person holding a license issued by the board to engage in the manufacture, transportation and sale of malt or brewed beverages; also, any person engaged in the legal manufacture of malt or brewed beverages within the territorial limits of the United States, outside the Commonwealth of Pennsylvania.

**Municipality**

"Municipality" shall mean any city, borough, incorporated town, or township of this Commonwealth.

**Official Seal**

"Official Seal" shall mean and include any insignia approved by the board that is required to be affixed to a package, as herein defined.

**Original container**

"Original container" shall mean all bottles, casks, kegs or other suitable containers that have been securely capped, sealed or corked by the manufacturer of malt or brewed beverages at the place of manufacture, with the name and address of the manufacturer of the malt or brewed beverages contained or to be contained therein permanently affixed to the bottle, cask, keg or other container, or in the case of a bottle or can, to the cap or cork used in sealing the same or to a label securely affixed to a bottle or can.

**Package**

"Package" shall mean any container or containers or receptacle or receptacles used for holding liquor or alcohol as marketed by the manufacturer.

**Person**

"Person" shall mean a natural person, association or corporation. Whenever used in a clause prescribing or imposing a fine or imprisonment or both, the term "person", as applied to "association", shall mean the partners or members thereof, and as applied to "corporation", shall mean the officers thereof, except, as to incorporated clubs, the term "person" shall mean such individual or individuals who, under the by-laws of such club, shall have jurisdiction over the possession and sale of liquor therein.

**Population**

"Population" (*As amended by Act 346 of July 10, 1957, P. L. 638*) shall mean the number of inhabitants as determined by the last preceding decennial census of the United States, or by any other census subsequently taken by the census bureau of the United States and so certified by it: Provided, however, That such other census shall not be a basis for the fixing of license fees as provided in article III, sections 405 and 439.

**Potable Distilled Spirits**

"Potable distilled spirits" shall mean and include any distillate from grains, wine, fruits, vegetables or molasses; except ethyl alcohol, capable of being used for beverage purposes.

"Regulation" shall mean any regulation prescribed by the board for carrying out the provisions of this act.

Regulation

"Restaurant" shall mean a reputable place operated by responsible persons of good reputation and habitually and principally used for the purpose of providing food for the public, the place to have an area within a building of not less than four hundred square feet, equipped with tables and chairs accommodating at least thirty persons at one time.

Restaurant

"Retail dispenser" shall mean any person licensed to engage in the retail sale of malt or brewed beverages for consumption on the premises of such licensee, with the privilege of selling malt or brewed beverages in quantities not in excess of one hundred forty-four fluid ounces in a single sale to one person, to be carried from the premises by the purchaser thereof.

Retail Dispenser

"Sale" or "Sell" shall include any transfer of liquor, alcohol or malt or brewed beverages for a consideration.

Sale, Sell

"Whiskey" shall mean and include any alcoholic distillate from a fermented mash of grain, capable of being used for beverage purposes.

Whiskey

"Winery" shall mean and include any premises and plants where any alcohol or liquor is produced by the process by which wine is produced, or premises and plants wherein liquid such as wine is produced; and shall include the manufacture by distillation of alcohol from the by-products of wine fermentation when the alcohol so derived is used solely to fortify the fermented products, under such regulations as are or may be promulgated by the proper agency of the United States Government, and such alcohol, for that purpose only, may be sold or exchanged between wineries holding permits in this Commonwealth, without restriction.

Winery

**Section 103. Saving Clause.**—The provisions of this act, so far as they are the same as those of existing laws, are intended as a continuation of such laws and not as new enactments. The repeal by this act of any act of Assembly or part thereof shall not revive any act or part thereof heretofore repealed or superseded. The provisions of this act shall not affect any act done, liability incurred or right accrued or vested, or affect any suit or prosecution pending or to be instituted to enforce any right or penalty or punish any offense under the authority of such repealed laws. All regulations and rules made and all licenses and permits issued pursuant to any act repealed by this act shall continue with the same force and effect as if such act had not been repealed.

Saving Clause

**Section 104. Interpretation of Act.**—(a) This act shall be deemed an exercise of the police power of the Commonwealth for the protection of the public welfare, health, peace and morals of the people of the Commonwealth and to prohibit forever the open saloon, and all of the provisions of this act shall be liberally construed for the accomplishment of this purpose.

Police power

(b) The provisions of this act are severable and if any of its provisions shall be held unconstitutional the decision of the court shall not affect or impair any of the remaining provisions.

Provisions severable



visions of this act. It is hereby declared to be the legislative intent that this act would have been adopted had such unconstitutional provisions not been included herein.

**Purpose is to prohibit transactions**

(c) Except as otherwise expressly provided, the purpose of this act is to prohibit the manufacture of and transactions in liquor, alcohol and malt or brewed beverages which take place in this Commonwealth, except by and under the control of the board as herein specifically provided, and every section and provision of the act shall be construed accordingly. The provisions of this act dealing with the manufacture, importation, sale and disposition of liquor, alcohol and malt or brewed beverages within the Commonwealth through the instrumentality of the board and otherwise, provide the means by which such control shall be made effective. This act shall not be construed as forbidding, affecting or regulating any transaction which is not subject to the legislative authority of this Commonwealth.

**Later statutes**

(d) Any reference in this act to the provisions of law on any subject shall apply to statutes becoming effective after the effective date of this act as well as to those then in existence.

**Section Headings**

(e) Section headings shall not be taken to govern or limit the scope of the sections of this act. The singular shall include the plural and the masculine shall include the feminine and the neuter.

## ARTICLE II.

### PENNSYLVANIA LIQUOR CONTROL BOARD.

**Pennsylvania Liquor Control Board created**

**Section 201. Appointment of Members; Terms; Salaries.**—An independent administrative board to be known as the "Pennsylvania Liquor Control Board" is hereby created. The board shall consist of three members to be appointed by the Governor by and with the advice and consent of two-thirds of all the members of the Senate. Of the original members, one shall be appointed for a term of two years, one for a term of four years, and one for a term of six years from the date of his appointment and until his successor shall have been appointed and qualified. Thereafter, all appointments shall be for terms of six years or until successors are appointed and qualified. Each member of the board shall receive an annual salary as fixed by law.

**Appointment of members**

**Terms of office**

**Annual salary**

**Qualifications of members**

**Section 202. Qualifications of Members.**—Each member of the board at the time of his appointment and qualification shall be a citizen of the United States and a resident of the Commonwealth of Pennsylvania, shall have been a qualified elector in the Commonwealth for a period of at least one year next preceding his appointment, and shall be not less than thirty years of age.

No member of the board during his period of service as such shall hold any other office under the laws of this Commonwealth or of the United States.

**Section 203. Chairman of Board.**—The board shall elect one of its members as chairman. The chairman shall, when present, preside at all meetings, and in his absence a member designated by the chairman shall preside.

Chairman

Two members of the board shall constitute a quorum, and any action or order of the board shall require the approval of at least two members.

Quorum

**Section 204. Secretary of Board.**—The board may appoint a secretary to hold office at its pleasure. The secretary, if appointed, shall have such powers and shall perform such duties not contrary to law as the board shall prescribe, and shall receive such compensation as the board, with the approval of the Governor, shall determine. The secretary shall have power and authority to designate, from time to time, one of the clerks appointed by the board to perform the duties of the secretary during his absence and the clerk so appointed shall exercise, for the time so designated, the powers of the secretary of the board.

Secretary

Powers and Duties

**Section 205. Bonds Required of Members and Secretary.**—Before entering upon the duties of their respective offices or positions, each member of the board and the secretary shall execute and file with the State Treasurer a bond in such penal sum as shall be fixed by the Executive Board of this Commonwealth upon recommendation of the Governor, but the amount of any such bond shall not be less than ten thousand dollars (\$10,000). Bonds in such penal sums as shall be fixed by the Executive Board likewise shall be executed and filed with the State Treasurer by such employees of the Pennsylvania Liquor Control Board as the head of such board shall, with the approval of the Executive Board, prescribe. Such bonds shall be payable to the Commonwealth of Pennsylvania and shall be conditioned for the faithful performance of the members', secretary's or employees' duties imposed by law or by lawful authority and that the person bonded will not knowingly violate the provisions of this act. All bonds required to be given under this section shall, before being accepted by the State Treasurer, be approved by the Department of Justice, and unless the Commonwealth shall establish its own indemnity fund, all such bonds shall be given with security approved by the Department of Justice. If the Commonwealth shall establish its own indemnity fund, the Executive Board may, nevertheless, require any bond given hereunder to be executed by a surety or sureties satisfactory to the Department of Justice. The cost of such bonds required to be executed by a surety or sureties shall be borne by the board as part of its operating expense.

Bonds of members, secretary, and employees

**Section 206. Board Subject to Administrative Code.**—Except as otherwise expressly provided by law, the board shall be subject to all the provisions of The Administrative Code of one thousand nine hundred twenty-nine, as amended, which apply generally to independent administrative boards and commissions.

Board to be subject to provisions of Administrative Code

General powers  
of Board

Section 207. General Powers of Board.—Under this act, the board shall have the power and its duty shall be:

## Purchases

(a) To buy, import or have in its possession for sale, and sell liquor and alcohol in the manner set forth in this act: Provided, however, That all purchases shall be made subject to the approval of the Auditor General or his designated deputy.

## Control

(b) (*As amended by Act 502 of January 14, 1952, P. L. 1863*) To control the manufacture, possession, sale, consumption, importation, use, storage, transportation and delivery of liquor, alcohol and malt or brewed beverages in accordance with the provisions of this act, and to fix the wholesale and retail prices at which liquors and alcohol shall be sold at Pennsylvania Liquor Stores: Provided, That in fixing sale prices, the board shall not give any preference or make any discrimination as to classes, brands or otherwise, except where special sales are deemed necessary to move unsaleable merchandise, or except where the addition of a service or handling charge to the fixed sales price of any merchandise in the same comparable price bracket, regardless of class, brand or otherwise, is, in the opinion of the board, required for the efficient operation of the State store system. The board shall require each Pennsylvania manufacturer and each nonresident manufacturer of liquors, other than wine, selling such liquors to the board, which are not manufactured in this Commonwealth, to make application for and be granted a permit by the board before such liquors not manufactured in this Commonwealth shall be purchased from such manufacturer. Each such manufacturer shall pay for such permit a fee which, in the case of a manufacturer of this Commonwealth, shall be equal to that required to be paid, if any, by a manufacturer or wholesaler of the state, territory or country of origin of the liquors, for selling liquors manufactured in Pennsylvania, and in the case of a nonresident manufacturer, shall be equal to that required to be paid, if any, in such state, territory or country by Pennsylvania manufacturers doing business in such state, territory or country. In the event that any such manufacturer shall, in the opinion of the board, sell or attempt to sell liquors to the board through another person for the purpose of evading this provision relating to permits, the board shall require such person, before purchasing liquors from him or it, to take out a permit and pay the same fee as hereinbefore required to be paid by such manufacturer. All permit fees so collected shall be paid into the State Stores Fund. The board shall not purchase any alcohol or liquor fermented, distilled, rectified, compounded or bottled in any state, territory or country, the laws of which result in prohibiting the importation therein of alcohol or liquor, fermented, distilled, rectified, compounded or bottled in Pennsylvania.

## Sales Permit

## Reciprocal fee

(c) To determine the municipalities within which Pennsylvania Liquor Stores shall be established and the locations of the stores within such municipalities.

State Store  
location

## Licenses

(d) (*As amended by Act 518 of January 13, 1966, P. L. 1301*) To grant, issue, suspend and revoke all licenses and permits authorized to be issued under this act and the regulations of the board and impose fines on licensees licensed under this act.



(e) Through the Department of Property and Supplies as agent; to lease and furnish and equip such buildings, rooms and other accommodations as shall be required for the operation of this act.

Lease  
buildings

(f) To appoint, fix the compensation and define the powers and duties of such managers, officers, inspectors, examiners, clerks and other employes as shall be required for the operation of this act, subject to the provisions of The Administrative Code of 1929 and the Civil Service Act.

Employes

(g) To determine the nature, form and capacity of all packages and original containers to be used for containing liquor, alcohol or malt or brewed beverages.

Packages and  
containers

(h) Without in any way limiting or being limited by the foregoing, to do all such things and perform all such acts as are deemed necessary or advisable for the purpose of carrying into effect the provisions of this act and the regulations made thereunder.

Broad power

(i) From time to time, to make such regulations not inconsistent with this act as it may deem necessary for the efficient administration of this act. The board shall cause such regulations to be published and disseminated throughout the Commonwealth in such manner as it shall deem necessary and advisable or as may be provided by law. Such regulations adopted by the board shall have the same force as if they formed a part of this act.

Regulations

Power to adopt

(j) (*As added by Act 583 of May 25, 1956, P. L. 1743*) To investigate, whenever any person complains, or when the board is aware that there is reasonable grounds to believe liquor or malt or brewed beverage is being sold on premises not licensed under the provisions of this act. If the investigation produces evidence of the unlawful sale of liquor or malt or brewed beverage or of any other violation of the provisions of this act, the board shall cause the prosecution of the person or persons believed to have been criminally liable for the unlawful acts. Any equipment or appurtenances actually used in the commission of the unlawful acts may be confiscated upon direction of the board. The confiscation by or under the direction of the board shall not, in any manner, divest or impair the rights or interest of any bona fide lien holder in the equipment or appurtenances, who had no knowledge that the same was being used in violation of this act.

Investigation  
of unlicensed  
places

**Section 208. Specific Subjects on Which Board May Adopt Regulations.**—Subject to the provisions of this act and without limiting the general power conferred by the preceding section, the board may make regulations regarding:

Regulation  
Subjects

(a) The equipment and management of Pennsylvania Liquor Stores and warehouses in which liquor and alcohol are kept or sold, and the books and records to be kept therein.

Store  
Operation

(b) The duties and conduct of the officers and employes of the board.

Employe  
conduct

(c) The purchase, as provided in this act, of liquor and alcohol, and its supply to Pennsylvania Liquor Stores.

Purchase and  
supply

**Brands**

(d) The classes, varieties and brands of liquor and alcohol to be kept and sold in Pennsylvania Liquor Stores.

**Price lists**

(e) The issuing and distribution of price lists for the various classes, varieties or brands of liquor and alcohol kept for sale by the board under this act.

**Sealing and labeling**

(f) *(As amended by Act 349 of February 17, 1956, P. L. 1078)* The sealing and labeling of liquor and alcohol sold under this act and of liquor and alcohol lawfully acquired by any person prior to January first, one thousand nine hundred thirty-four. This section shall not be construed to authorize the board to require that packages containing wine have affixed thereto the official seal of the board.

**Forms**

(g) Forms to be used for the purposes of this act.

**Licensed places**

(h) The issuance of licenses and permits and the conduct, management, sanitation and equipment of places licensed or included in permits.

**Receipts**

(i) The place and manner of depositing the receipts of Pennsylvania Liquor Stores and the transmission of balances to the Treasury Department through the Department of Revenue.

**Solicitation of orders**

(j). The solicitation by resident or nonresident vendors of liquor from Pennsylvania licensees and other persons of orders for liquor to be sold through the Pennsylvania Liquor Stores and, in the case of nonresident vendors, the collection therefrom of license fees for such privilege at the same rate as provided herein for importers' licenses.

**Police power****Arrest on view**

Section 209. *(As amended by Act 243 of July 31, 1968, P.L. )* Officers and Investigators of the Board to be Peace Officers; Powers. Such employees of the Board as are designated "enforcement officers" or "investigators" are hereby declared to be peace officers and are hereby given police power and authority throughout the Commonwealth to arrest on view, except in private homes, without warrant, any person actually engaged in the unlawful sale, importation, manufacture or transportation, or having unlawful possession of liquor, alcohol or malt or brewed beverages, contrary to the provisions of this act or any other law of this Commonwealth. Such officers and investigators shall have power and authority, upon reasonable and probable cause, to search for and to seize without warrant or process, except in private homes, any liquor, alcohol and malt or brewed beverages unlawfully possessed, manufactured, sold, imported or transported, and any stills, equipment, materials, utensils, vehicles, boats, vessels, animals, aircraft, or any of them, which are or have been used in the unlawful manufacture, sale, importation or transportation of the same. Such liquor, alcohol, malt or brewed beverages, stills, equipment, materials, utensils, vehicles, boats, vessels, animals or

aircraft so seized shall be disposed of as hereinafter provided.

Enforcement Officers or Investigators may be retired upon reaching age sixty-five.

**Section 210. Restrictions on Members of the Board and Employees of Commonwealth.**—(a) A member or employe of the board shall not be directly or indirectly interested or engaged in any other business or undertaking dealing in liquor, alcohol, or malt or brewed beverages, whether as owner, part owner, partner, member of syndicate, shareholder, agent or employe, and whether for his own benefit or in a fiduciary capacity for some other person.

Restrictions  
on members  
and employes

Liquor  
business

(b) No member or employe of the Board nor any employe of the Commonwealth shall solicit or receive, directly or indirectly, any commission, remuneration or gift whatsoever, from any person having sold, selling or offering liquor or alcohol for sale to the Board for use in Pennsylvania Liquor Stores.

Receiving  
gifts, etc.

### ARTICLE III.

#### PENNSYLVANIA LIQUOR STORES.

**Section 301. (As amended by Act 161 of August 10, 1965, P. L. 306) Board to Establish State Liquor Stores.**

State Stores  
Location

—The board shall establish, operate and maintain at such places throughout the Commonwealth as it shall deem essential and advisable, stores to be known as "Pennsylvania Liquor Stores," for the sale of liquor and alcohol in accordance with the provisions of and the regulations made under this act. When the board shall have determined upon the location of a liquor store in any municipality, it shall give notice of such location by public advertisement in two newspapers of general circulation. In cities of the first class, the location shall also be posted for a period of at least fifteen days following its determination by the board as required in section 403 (g) of this act. The notice shall be posted in a conspicuous place on the outside of the premises in which the proposed store is to operate or, in the event that a new structure is to be built in a similarly visible location. If, within five days after the appearance of such advertisement, or of the last day upon which the notice was posted, fifteen or more taxpayers residing within a quarter of a mile of such location or the City Solicitor of the city of the first class, shall file a protest with the court of quarter sessions of the county averring that the location is objectionable because of its proximity to a church, a school, or to private residences, the court shall forthwith hold a hearing affording an opportunity to the protestants and to the board to present evidence. The court shall render its decision immediately upon the conclusion of the testimony and from the decision there shall be no appeal. If the court shall determine that the proposed location is undesirable for the reasons set forth in the protest, the board shall abandon it and find another location. The board may establish, operate and maintain such establishments for storing and testing liquors as it shall deem expedient to carry out its powers and duties under this act.

Protest



**Lease of  
premises**

The board may lease the necessary premises for such stores or establishments, but all such leases shall be made through the Department of Property and Supplies as agent of the board. The board, through the Department of Property and Supplies, shall have authority to purchase such equipment and appointments as may be required in the operation of such stores or establishments.

**Selection of  
personnel**

**Section 302. Selection of Personnel.**—Officers and employees of the board, except as herein otherwise provided, shall be appointed and employed subject to the provisions of the Civil Service Act.

**Store  
management**

**Section 303. Management of Pennsylvania Liquor Stores.**—Every Pennsylvania Liquor Store shall be conducted by a person appointed in the manner provided in the Civil Service Act who shall be known as the "manager" and who shall, under the directions of the board, be responsible for carrying out the provisions of this act and the regulations adopted by the board under this act as far as they relate to the conduct of such stores.

**Section 304. When Sales May Be Made at Pennsylvania Liquor Stores.**—Every Pennsylvania Liquor Store shall be open for business week days, except legal holidays or any day on which a general, municipal, special or primary election is being held, during such hours as the board, in its discretion, shall determine, but shall not be open longer than fourteen hours in any one day nor later than eleven o'clock post-meridian. The board may, with the approval of the Governor, temporarily close any store in any municipality.

**Sales by  
Pennsylvania  
Liquor stores**

**Section 305. Sales by Pennsylvania Liquor Stores.**—  
(a) Every Pennsylvania Liquor Store shall keep in stock for sale such classes, varieties and brands of liquor and alcohol as the board shall prescribe. If any person shall desire to purchase any class, variety or brand of liquor or alcohol which any such store does not have in stock, it shall be the duty of such store immediately to order the same upon the payment of a reasonable deposit by the purchaser in such proportion of the approximate cost of the order as shall be prescribed by the regulations of the board. The customer shall be notified immediately upon the arrival of the goods.

**Special order**

Unless the customer pays for and accepts delivery of any such special order within five days after notice of arrival, the store may place it in stock for general sale and the customer's deposit shall be forfeited.

**Wholesale**

(b) Every Pennsylvania Liquor Store shall sell liquors at wholesale to hotels, restaurants, clubs, and railroad, pullman and steamship companies licensed under this act; and, under the regulations of the board, to pharmacists duly licensed and registered under the laws of the Commonwealth, and to manufacturing pharmacists, and to reputable hospitals approved by the board, or chemists. The board may sell to registered pharmacists only such liquors as conform to the Pharmacopoeia of the United States, the National Formulary, or the American Homeopathic Pharmacopoeia. All other sales by such stores shall be at retail. No liquor shall be sold except for cash, except that the board may, by regulation,

authorize the acceptance of checks for liquor sold at wholesale. The board shall have power to designate certain stores for wholesale or retail sales exclusively.

(c) Whenever any checks issued in payment of liquor or alcohol purchased from State Liquor Stores by persons holding wholesale purchase permit cards issued by the board shall be returned to the board as dishonored, the board shall charge a fee of five dollars per hundred dollars or fractional part thereof, plus all protest fees, to the maker of such check submitted to the board. Failure to pay the face amount of the check in full and all charges thereon as herein required within ten days after demand has been made by the board upon the maker of the check shall be cause for revocation or suspension of any license issued by the board to the person who issued such check and the cancellation of the wholesale purchase permit card held by such person.

(d) (*As amended by Act 349 of February 17, 1956, P. L. 1078*) No liquor or alcohol, except wine, shall be sold to any purchaser except in a package bearing the official seal of the board required by this act and no package shall be opened on the premises of a Pennsylvania Liquor Store. No manager or other employe of the board employed in a Pennsylvania Liquor Store shall allow any liquor or alcohol to be consumed on the store premises, nor shall any person consume any liquor or alcohol on such premises.

(e) The board may sell tax exempt alcohol to the Commonwealth of Pennsylvania and to persons to whom the board shall, by regulation to be promulgated by it, issue special permits for the purchase of such tax exempt alcohol.

Such permits may be issued to the United States or any governmental agency thereof, to any university or college of learning, any laboratory for use exclusively in scientific research, any hospital, sanitarium, eleemosynary institution or dispensary; to physicians, dentists, veterinarians and pharmacists duly licensed and registered under the laws of the Commonwealth of Pennsylvania; to manufacturing chemists and pharmacists or other persons for use in the manufacture or compounding of preparations unfit for beverage purposes.

(f) (*As amended by Act 316 of October 21, 1965, P. L. 642*) Every purchaser of liquor or alcohol from a Pennsylvania Liquor Store shall receive a numbered receipt which shall show the price paid therefor, and such other information as the board may prescribe. Copies of all receipts issued by a Pennsylvania Liquor Store shall be retained by and shall form part of the records of such store.

(g) The board is hereby authorized and empowered to adopt and enforce appropriate rules and regulations to insure the equitable wholesale and retail sale and distribution, through the Pennsylvania Liquor Stores, of available liquor and alcohol at any time when the demand therefor is greater than the supply.

**Section 306. Audits by Auditor General.**—It shall be the duty of the Department of the Auditor General to make all audits which may be necessary in connection with the

**Dishonored  
checks**

**Failure to pay**

**Official seal**

**Consumption  
in store**

**Tax exempt  
alcohol**

**Permits**

**Receipts**

**Rationing**

**Audits by  
Auditor  
General**



administration of the financial affairs of the board and the Pennsylvania Liquor Stores operated and maintained by the board.

At least one audit shall be made each year of the affairs of the board, and all collections made by the Pennsylvania Liquor Stores shall be audited quarterly.

Special audits of the affairs of the board and the Pennsylvania Liquor Stores maintained and operated by the board may be made whenever they may, in the judgment of the Auditor General, appear necessary, and shall be made whenever the Governor shall call upon the Auditor General to make them.

Copies of all audits made by the Department of the Auditor General shall be promptly submitted to the board and to the Governor.

Unless the Department of the Auditor General shall neglect or refuse to make annual, quarterly or special audits, as hereinabove required, it shall be unlawful for the board to expend any money appropriated to it by the General Assembly for any audit of its affairs, except for the payment of the compensation and expenses of such auditors as are regularly employed as part of the administrative staff of the board.

#### ARTICLE IV.

##### LICENSES AND REGULATIONS; LIQUOR, ALCOHOL AND MALT AND BREWED BEVERAGES.

##### (A) Liquor and Alcohol (Not Including Manufacturers).

**Section 401. Authority to Issue Liquor Licenses to Hotels, Restaurants and Clubs.**—(a) Subject to the provisions of this act and regulations promulgated under this act, the board shall have authority to issue a retail liquor license for any premises kept or operated by a hotel, restaurant or club and specified in the license entitling the hotel, restaurant or club to purchase liquor from a Pennsylvania Liquor Store and to keep on the premises such liquor and subject to the provisions of this act and the regulations made thereunder, to sell the same and also malt or brewed beverages to guests, patrons or members for consumption on the hotel, restaurant or club premises. Such licensees, other than clubs, shall be permitted to sell malt or brewed beverages for consumption off the premises where sold in quantities of not more than one hundred forty-four fluid ounces in a single sale to one person. Such licenses shall be known as hotel liquor licenses, restaurant liquor licenses and club liquor licenses, respectively. No person who holds, either by appointment or election, any public office which involves the duty to enforce any of the penal laws of the United States of America or the penal laws of the Commonwealth of Pennsylvania or any penal ordinance or resolution of any political subdivision of this Commonwealth shall be issued any hotel or restaurant liquor license, nor shall such a person have any interest, directly or indirectly, in any such license.

Authority to  
Issue Hotel,  
Restaurant  
and Club  
Liquor  
Licenses

144 ounces for  
off premises  
consumption

Public office  
involving penal  
law enforce-  
ment

(b) The board may issue to any club which caters to groups of non-members, either privately or for functions, a catering license, and the board shall, by its rules and regulations, define what constitutes catering under this subsection.

Catering Club  
License

**Section 402. License Districts; License Year; Hearings.**—The board shall, by regulation, divide the State into convenient license districts and shall hold hearings on applications for licenses and renewals thereof, as it deems necessary, at a convenient place or places in each of said districts, at such times as it shall fix, by regulation, for the purpose of hearing testimony for and against applications for new licenses and renewals thereof. The board may provide for the holding of such hearings by examiners learned in the law, to be appointed by the Governor, who shall not be subject to the "Civil Service Act." Such examiners shall make report to the board in each case with their recommendations. The board shall, by regulation, fix the license year for each separate district so that the expiration dates shall be uniform in each of the several districts but staggered as to the State.

License Year;  
Renewal

Hearing  
Examiners

Expiration  
Dates

**Section 403. Applications for Hotel, Restaurant and Club Liquor Licenses.**—(a) *(As amended by Act 553 of November 19, 1959, P. L. 1546 and Act 702 of September 28, 1961, P. L. 1728)* Every applicant for a hotel liquor license, restaurant liquor license or club liquor license or for the transfer of an existing license to another premises not then licensed shall file a written application with the board in such form and containing such information as the board shall from time to time prescribe, which shall be accompanied by a filing fee of twenty dollars (\$20), the prescribed license fee, and the bond hereinafter specified. Every such application shall contain a description of that part of the hotel, restaurant or club for which the applicant desires a license and shall set forth such other material information, description or plan of that part of the hotel, restaurant or club where it is proposed to keep and sell liquor as may be required by the regulations of the board. The descriptions, information and plans referred to in this subsection shall show the hotel, restaurant, club, or the proposed location for the construction of a hotel, restaurant or club, at the time the application is made, and shall show any alterations proposed to be made thereto, or the new building proposed to be constructed after the approval by the board of the application for a license or for the transfer of an existing license to another premises not then licensed. No physical alterations, improvements or changes shall be required to be made to any hotel, restaurant or club, nor shall any new building for any such purpose, be required to be constructed until approval of the application for license or for the transfer of an existing license to another premises not then licensed by the board. After approval of the application, the licensee shall make the physical alterations, improvements and changes to the licensed premises, or shall construct the new building in the manner specified by the board at the time of approval, and the licensee shall not transact any business under the license until the board has approved the completed physical alterations, improvements and changes

Application for  
License

Filing fee  
\$20.00

Proposed  
building or  
alterations

Prior  
Approval

**Transfer prohibited**

to the licensed premises, or the completed construction of the new building as conforming to the specifications required by the board at the time of issuance or transfer of the license, and is satisfied that the establishment is a restaurant, hotel or club as defined by this act. The board may require that all such alterations or construction or conformity to definition be completed within six months from the time of issuance or transfer of the license. Failure to comply with these requirements shall be considered cause for revocation of the license. No such license shall be transferable between the time of issuance or transfer of the license and the approval of the completed alterations or construction by the board and full compliance by the licensee with the requirements of this act, except in the case of death of the licensee prior to full compliance with all of the aforementioned requirements, in which event, the license may be transferred by the board as provided in section 468 of this act for the transfer of the license in the case of death of the licensee.

**Citizenship  
3 year residence**

(b) If the applicant is a natural person, his application must show that he is a citizen of the United States and has been a resident of this Commonwealth for at least two years immediately preceding his application.

**Corporation****Citizenship  
of officers,  
directors,  
stockholders  
and manager**

(c) If the applicant is a corporation, the application must show that the corporation was created under the laws of Pennsylvania or holds a certificate of authority to transact business in Pennsylvania, that all officers, directors and stockholders are citizens of the United States, and that the manager of the hotel, restaurant or club is a citizen of the United States.

**Application  
affidavit**

(d) Each application shall be signed and verified by oath or affirmation by the owner, if a natural person, or, in the case of an association, by a member or partner thereof, or, in the case of a corporation, by an executive officer thereof or any person specifically authorized by the corporation to sign the application, to which shall be attached written evidence of his authority.

**Club membership list**

(e) If the applicant is an association, the application shall set forth the names and addresses of the persons constituting the association, and if a corporation, the names and addresses of the principal officers thereof. Every club applicant shall file with and as a part of its application a list of the names and addresses of its members, directors, officers, agents and employees, together with the dates of their admission, election or employment, and such other information with respect to its affairs as the board shall require.

**Operation for  
benefit of  
entire  
membership**

(f) The board shall refuse to issue licenses to clubs when it appears that the operation of the licensed business would inure to the benefit of individual members, officers, agents or employees of the club, rather than to the benefit of the entire membership of the club.

**Notice of  
application**

(g) *(As amended by Act 553 of November 19, 1959, P. L. 1546)* Every applicant for a new license or for the transfer of an existing license to another premises not then licensed shall post, for a period of at least fifteen days beginning with the day the application is filed with the board, in a conspicuous



place on the outside of the premises or at the proposed new location for which the license is applied, a notice of such application, in such form, of such size, and containing such provisions as the board may require by its regulations. Proof of the posting of such notice shall be filed with the board.

(h) If any false statement is intentionally made in any part of the application, the affiant shall be deemed guilty of a misdemeanor and, upon conviction, shall be subject to the penalties provided by this article.

**Section 404.** (As amended by Act 260 of August 25, 1959, P.L. 746; Act 555 of November 19, 1959, P.L. 1550; Act 269 of July 10, 1961, P.L. 554; Act 663 of September 21, 1961, P.L. 1579 and Act 178 of October 9, 1967, P.L. )\* **Issuance of Hotel, Restaurant and Club Liquor Licenses.** Upon receipt of the application, the proper fees and bond, and upon being satisfied of the truth of the statements in the application that the applicant is the only person in any manner pecuniarily interested in the business so asked to be licensed and that no other person will be in any manner pecuniarily interested therein during the continuance of the license, except as hereinafter permitted, and that the applicant is a person of good repute, that the premises applied for meet all the requirements of this act and the regulations of the Board, that the applicant seeks a license for a hotel, restaurant or club, as defined in this act, and that the issuance of such license is not prohibited by any of the provisions of this act, the Board shall, in the case of a hotel or restaurant, grant and issue to the applicant a liquor license, and in the case of a club may, in its discretion, issue or refuse a license: Provided, however, That in the case of any new license or the transfer of any license to a new location the Board may, in its discretion, grant or refuse such new license or transfer if such place proposed to be licensed is within three hundred feet of any church, hospital, charitable institution, school or public playground, or if such new license or transfer is applied for a place which is within two hundred feet of any other premises which is licensed by the Board, or if such new license or transfer is applied for a place where the principal business is the sale of liquid fuels and oil: And provided further, That the Board shall refuse any application for a new license or the transfer of any license to a new location if, in the Board's opinion, such new license or transfer would be detrimental to the welfare, health, peace and morals of the inhabitants of the neighborhood within a radius of five hundred feet of the place proposed to be licensed: And provided further, That the Board shall not

**False statement a misdemeanor**

**Issuance of Licenses**

**Pecuniary interest**

**Repute**

**Discretionary for clubs**

**300' of church, etc.**

**200' of other license**

**Detriment of neighborhood**

\* Section 2 of Act 426 of December 16, 1965, P. L. 1106, provides "Trade show and convention licenses shall not be subject to the provisions of Section 404 except in so far as they relate to the reputation of the applicant."

Issue twice a year

New application filing date

New laws

Airport Restaurant

Discretion as to Felony

Hotel & Restaurant License Fees Graduated according to population

0-1,499, \$150

All except townships  
1500-9,999, \$200  
Townships  
1,500-11,999,  
\$200

All except townships  
10,000-49,999,  
\$300

Townships  
12,000-49,999,  
\$300

50,000-99,999,  
\$400

100,000-149,999,  
\$500

150,000-up,  
\$600

issue new licenses in any license district more than twice each license year, effective from specific dates fixed by the Board, and new licenses shall not be granted, except for hotels as defined in this act, unless the application therefor shall have been filed at least thirty days before the effective date of the license: And provided further, That nothing herein contained shall prohibit the Board from issuing a new license for the balance of any unexpired term in any license district to any applicant in such district, who shall have become eligible to hold such license as the result of legislative enactment, when such enactment shall have taken place during the license term of that district for which application is made or within the thirty days immediately preceding such term, nor shall anything herein contained prohibit the Board from issuing at any time a new license for an airport restaurant, as defined in section 461 of this act, for the balance of the unexpired license term in any license district: And provided further, That the Board shall have the discretion to refuse a license to any person or to any corporation, partnership or association if such person, or any officer or director of such corporation, or any member or partner of such partnership or association shall have been convicted or found guilty of a felony within a period of five years immediately preceding the date of application for the said license.

**Section 405. License Fees.**—(a) License fees for hotel and restaurant liquor licenses shall be graduated according to the population of the municipality as determined by the last preceding decennial census of the United States in which the hotel or restaurant is located, as follows:

In municipalities having a population of less than fifteen hundred inhabitants, one hundred fifty dollars (\$150.00).

In municipalities, except townships, having a population of fifteen hundred and more but less than ten thousand inhabitants, and in townships having a population of fifteen hundred and more but less than twelve thousand inhabitants, two hundred dollars (\$200.00).

In municipalities, except townships, having a population of ten thousand and more but less than fifty thousand inhabitants, and in townships having a population of twelve thousand and more but less than fifty thousand inhabitants, three hundred dollars (\$300.00).

In those having a population of fifty thousand and more but less than one hundred thousand inhabitants, four hundred dollars (\$400.00).

In those having a population of one hundred thousand and more but less than one hundred fifty thousand inhabitants, five hundred dollars (\$500.00).

In those having a population of one hundred fifty thousand and more inhabitants, six hundred dollars (\$600.00).



(b) Every applicant for a club liquor license shall pay to the board a license fee of fifty dollars (\$50.00), except clubs to which catering licenses are issued, in which cases the license fees shall be the same as for hotels and restaurants located in the same municipality.

(c) All license fees authorized under this section shall be collected by the board for the use of the municipalities in which such fees were collected.

(d) *(As added by Act 348 of July 18, 1961, P. L. 790)*  
Whenever any checks issued in payment of filing and/or license fees shall be returned to the board as dishonored, the board shall charge a fee of five dollars (\$5.00) per hundred dollars, or fractional part thereof, plus all protest fees, to the maker of such check submitted to the board. Failure to pay the face amount of the check in full and all charges thereon as herein required within ten days after demand has been made by the board upon the maker of the check, the license of such person if issued, shall immediately terminate and be cancelled without any action on the part of the board.

Section 406. *(As amended by Act 99 of May 27, 1957; P.L. 201; Act 781 of January 7, 1960, P.L. 2106; Act 639 of September 19, 1961, P.L. 1507; Act 642 of September 20, 1961, P.L. 1513; Act 183 of October 9, 1967, P.L. and Act 302 of November 30, 1967, P.L.)*

**Sales by Liquor Licensees; Restrictions.** (a) Every hotel, restaurant or club liquor licensee may sell liquor and malt or brewed beverages by the glass, open bottle or other container, and in any mixture, for consumption only in that part of the hotel or restaurant habitually used for the serving of food to guests or patrons, and in the case of hotels, to guests, and in the case of clubs, to members, in their private rooms in the hotel or club. No club licensee nor its officers, servants, agents or employees, other than one holding a catering license, shall sell any liquor or malt or brewed beverages to any person except a member of the club. No club holding a catering license nor its officers, servants, agents or employees shall sell on Sunday to nonmembers any liquor or malt or brewed beverages. In the case of a restaurant located in a hotel which is not operated by the owner of the hotel and which is licensed to sell liquor under this act, liquor and malt or brewed beverages may be sold for consumption in that part of the restaurant habitually used for the serving of meals to patrons and also to guests in private guest rooms in the hotel. For the purpose of this paragraph, any person who is an active member of another club which is chartered by the same state or national organization shall have the same rights and privileges as members of the particular club.

Club license fee \$50  
Catering club license fee same as Hotel or Restaurant

License fees for municipal use

Dishonored checks

Sales of liquor

In private rooms

To nonmembers

On Sunday to nonmembers by entering clubs

**Hours of sale—  
1st & 2nd class  
cities****Referendum  
necessary****Hours of sale—  
other municipi-  
palities****Election day  
sales****Public Service  
Hours****Daylight  
Saving Time****Posting notice****Petition for  
referendum**

Hotel liquor licensees and restaurant liquor licensees located in hotels in cities of the first and second class may sell liquor and malt or brewed beverages only after seven o'clock antemeridian of any day until two o'clock antemeridian of the following day, except Sunday, and may sell liquor and malt or brewed beverages on Sunday\* between the hours of twelve o'clock midnight and two o'clock antemeridian and one o'clock postmeridian and ten o'clock postmeridian. Such Sunday sales shall be made subject to the restrictions imposed by the act on sales by hotels and restaurants in hotels for sales on week-days as well as this section.

Hotel and restaurant liquor licensees, other than those located in hotels in cities of the first and second class, their servants, agents or employes may sell liquor and malt or brewed beverages only after seven o'clock antemeridian of any day and until two o'clock antemeridian of the following day, and shall not sell after two o'clock antemeridian on Sunday. No hotel, restaurant and public-service liquor licensee shall sell liquor and malt or brewed beverages after two o'clock antemeridian on any day on which a general, municipal, special or primary election is being held until one hour after the time fixed by law for closing the polls. No club licensee or its servants, agents or employes may sell liquor or malt or brewed beverages between the hours of three o'clock antemeridian and seven o'clock antemeridian on any day. No public service liquor licensee or its servants, agents or employes may sell liquor or malt or brewed beverages between the hours of two o'clock antemeridian and seven o'clock antemeridian on any day.

(This paragraph is, in effect, repealed by Act 195 of August 26, 1965, P. L. 378.) Any hotel, restaurant, club or public service-liquor licensee may, by given notice to the board, advance by one hour the hours herein prescribed as those during which liquor and malt or brewed beverages may be sold during such part of the year when daylight saving time is being observed generally in the municipality in which the place of business of such licensee is located. Any licensee who elects to operate his place of business in accordance with daylight saving time shall post a conspicuous notice in his place of business that he is operating in accordance with daylight saving time.

Notwithstanding any provisions to the contrary, whenever the thirty-first day of December falls on a Sunday, every hotel or restaurant liquor licensee, their servants, agents or employes may sell liquor and malt or brewed beverages on any such day after one o'clock postmeridian and until two o'clock antemeridian of the following day.

(b) (As amended by Act 18 of February 21, 1961, P. L. 45) When at least twenty-five thousand registered electors in any city of the first or second class shall file a petition with

\* Section 2 of amending Act 781 provides: This act shall take effect immediately but the sale of liquor and malt or brewed beverages on Sunday in hotels in cities of the first and second class shall not be permitted in any city until after a majority of electors voting in such city of the first or second class vote in favor of such sale under the referendum provisions of Section 40G.

the county board of elections of the county for a referendum on the question of determining the will of the electors with respect to the authorization of the sale of liquor and malt or brewed beverages during certain hours on Sunday in hotels, the county board of elections shall cause a question to be placed on the ballots or on the voting machine board and submitted at the primary immediately preceding the municipal election. Said proceedings shall be in the manner and subject to the provisions of the election laws which relate to the signing, filing and adjudication of nomination petitions in so far as such provisions are applicable. Such question shall be in the following form:

Do you favor the authorization of the sale of liquor and malt or brewed beverages on Sunday in hotels between the hours of one o'clock postmeridian and ten o'clock postmeridian?	Yes	
	No	

The said question shall be printed on separate official ballots in bound form by the county commissioners of each county in which cities of the first and second class are established. A sufficient number of ballots shall be furnished to the election officers in each election district of such counties so that one ballot may be supplied to each voter at such election. In districts where voting machines are used, such question shall appear on the face of the machine, where the machine is properly equipped for such purposes.

(c) The votes cast on such question shall be counted by the election officers and returns thereof made by them, and by election officers where voting machines are used, to the prothonotary of the county who shall lay the same before the return board for computation at the same time and in the same manner as other returns. The return board shall compute the said returns by municipalities and certify the results of the vote cast on the question to the Pennsylvania Liquor Control Board.

(d) *(As amended by Act 18 of February 21, 1961, P. L. 45)* In any city of the first or second class, the will of the electors with respect to the authorization of the sale of liquor and malt or brewed beverages during certain hours on Sunday in hotels may, after the year 1960, but not oftener than once in four years, be ascertained and the question as provided in this act shall be submitted to the electors of any city of the first or second class, when at least twenty-five thousand registered electors in the city of the first or second class, shall file a petition with the county board of elections of the county for a referendum on said question. Such petition shall be filed with the corporate authorities at least sixty days before the day of any election at which the question is to be submitted, and, if the petition is sufficiently signed, shall thereupon be certified to the county commissioners, who shall cause such question to be submitted in the same manner as is provided in this act for the election in the year 1961. If a majority of the electors voting in any city of the first or second class vote "yes", authorization of the

Once in 4 years

Majority vote



sale of liquor and malt or brewed beverages during certain hours on Sunday in hotels shall be granted by the Pennsylvania Liquor Control Board, but if a majority of the electors voting on such question vote "no", then the authorization shall be withdrawn.

(e) It is the intent of this act to provide a method whereby the will of the electors of each city with respect to the authorization of the sale of liquor and malt or brewed beverages during certain hours on Sunday in hotels may be ascertained, and it shall be the duty of the Pennsylvania Liquor Control Board to grant such authorization in accordance with the will of the electors, as ascertained at said election. In case of failure of the board to do so, the duty herein imposed upon the board may be enforced by mandamus.

(f) The provisions of this section shall be applicable only to those hotels whose sales of food and nonalcoholic beverages are equal to fifty-five per centum or more of the combined gross sales of both food and alcoholic beverages.

(g) The provisions of this section shall be applicable only to those rooms in hotels customarily used for the serving of food.

(h) The board is specifically given power, without limiting the power conferred by other sections, to make such rules and regulations as it deems necessary to insure compliance with and the enforcement of the provisions of this section.

**Section 407. Sale of Malt or Brewed Beverages by Liquor Licensees.**—Every liquor license issued to a hotel, restaurant, club, or a railroad, pullman or steamship company under this subdivision (A) for the sale of liquor shall authorize the licensee to sell malt or brewed beverages at the same places but subject to the same restrictions and penalties as apply to sales of liquor, except that licensees other than clubs may sell malt or brewed beverages for consumption off the premises where sold in quantities of not more than one hundred forty-four fluid ounces in a single sale to one person. No licensee under this subdivision (A) shall at the same time be the holder of any other class of license, except a retail dispenser's license authorizing the sale of malt or brewed beverages only.

**Section 408. Public Service Liquor Licenses.**—(a) Subject to the provisions of this act and regulations promulgated under this act, the board, upon application, shall issue retail liquor licenses to railroad or pullman companies permitting liquor and malt or brewed beverages to be sold in dining, club or buffet cars to passengers for consumption while enroute on such railroad, and may issue retail liquor licenses to steamship companies permitting liquor or malt or brewed beverages to be sold in the dining compartments of steamships or vessels wherever operated in the Commonwealth, except when standing or moored in stations, terminals or docks within a municipality wherein sales of liquor for consumption on the premises are prohibited. Such licenses shall be known as public service liquor licenses. The board

Board duty

55% food sales

Rooms for  
Sunday sales

Regulations

Sale of Malt  
or Brewed  
Beverages

For off  
premises  
consumption

Public Service  
Licenses

Master licenses

may issue a master license to railroad or pullman companies to cover the maximum number of cars which the company shall estimate that it will operate within the Commonwealth on any one day. Such licensees shall file monthly reports with the board showing the maximum number of cars operated in any one day during the preceding month, and if it appears that more cars have been operated than covered by its license it shall forthwith remit to the board the sum of twenty dollars for each extra car so operated.

Monthly  
reports

(b) For the purpose of considering an application by a steamship company for a public service liquor license, the board may cause an inspection of the steamship or vessel for which a license is desired. The board may, in its discretion, grant or refuse the license applied for and there shall be no appeal from its decision, except that an action of mandamus may be brought against the board in the manner provided by law.

Inspection

No appeal;  
Mandamus

(c) Every applicant for a public service liquor license shall, before receiving such license, file with the board a surety bond as hereinafter prescribed, pay to the board for each of the maximum number of dining, club or buffet cars which the applicant estimates it will have in operation on any one day an annual fee of twenty dollars (\$20.00), and for each steamship or vessel for which a license is desired an annual fee of one hundred dollars (\$100.00).

Fee \$20 per  
car \$100 per  
vessel

(d) Unless previously revoked, every license issued by the board under this section shall expire and terminate on the thirty-first day of December, in the year for which the license is issued. Licenses issued under the provisions of this section shall be renewed annually, as herein provided, upon the filing of applications in such form as the board shall prescribe, but no license shall be renewed until the applicant shall file with the board a new surety bond and shall pay the requisite license fee specified in this section.

Expiration

Renewal

(e) (As amended by Act 639 of September 19, 1961, P. L. 1507) Except as otherwise specifically provided, sales of liquor and malt or brewed beverages by the aforesaid public service company licensees shall be made in accordance with, and shall be subject to, the provisions of this act relating to the sale of liquors by restaurant licensees.

Sales

**Section 408.1. (As added by Act 426 of December 16, 1965, P. L. 1106) \* Trade Show and Convention Licenses.**

(a) (As amended by Act 247 of November 17, 1967, P. L. ) The Board is authorized to issue a license in any city of the first or second class for the retail sale of liquor and malt or brewed beverages by the glass, open bottles or other container or in any mixture for consumption in any restaurant or other appropriate location on

\* Section 2 of Act 426 of December 16, 1965, P. L. 1106, provides "Trade show and convention licenses shall not be subject to the provisions of Section 404 except in so far as they relate to the reputation of the applicant. . . ."



city-owned premises or on premises of an authority created under the act of July 29, 1953 (P.L. 1034), known as the "Public Auditorium Authorities Law" customarily used or available for use for trade shows and conventions. Any concessionaire selected and certified by the city or its authorized agency or by the authority may apply for a license.

(b) The application for a trade show and convention license may be filed at any time and shall conform with all requirements for restaurant liquor license applications except as may be otherwise provided herein. The applicant shall submit such other information as the board may require. Application shall be in writing on forms prescribed by the board and shall be signed and submitted to the board by the applicant. The filing fee which shall accompany the trade show and convention license application shall be twenty dollars (\$20).

(c) Upon receipt of the application in proper form and the application fee, and upon being satisfied that the applicant is of good repute and financially responsible and that the proposed place of business is proper, the board shall issue a license to the applicant.

(d) (As amended by Act 247 of November 17, 1967, P.L. ) The license shall be issued for the same period as provided for restaurant licenses and shall be renewed as in section 402. The license shall terminate upon revocation by the Board or upon termination of the contract between the concessionaire and the city or authority.

(e) The annual fee for a trade show and convention license shall be six hundred dollars (\$600), and shall accompany the application for the license. Whenever a concessionaire's contract terminates the license shall be returned to the board for cancellation and a new license shall be issued to a new applicant.

(f) The penal sum of the bond which shall be filed by an applicant for a trade show and convention license pursuant to section 465 of this article shall be two thousand dollars (\$2,000) and in addition thereto he shall file an additional bond in a sum to assure payment of any suspension of license up to one hundred days.

(g) (As amended by Act 247 of November 17, 1967, P.L. ) Sales by the holder of a trade show and convention license may be made except to those persons prohibited under clause (1) of section 493 of this act on city-owned or authority-owned, leased or operated premises customarily used or available for use for trade shows and conventions during the hours in which the convention or trade show is being held and up to one hour after the scheduled closing, and at functions which are incidental to or a part of the trade show or convention, but such sales may not be made beyond the hours expressed in the act for the sale of liquor by restaurant li-

censees: Provided, however, That during the hours expressed in this act for the sale of liquor by hotel licensees, sales of such liquor or malt or brewed beverages may be made by said licensee at banquets, not incidental to trade shows or conventions, at which more than two thousand persons are scheduled to attend, and at functions irrespective of attendance, which are directly related to the Philadelphia Commercial Museum or the Center for International Visitors: And provided further, That no such sale shall be made at any sporting, athletic or theatrical event.

(b) *(As amended by Act 247 of November 17, 1967, P.L. )* Whenever a contract is terminated prior to the expiration date provided in the contract between the city or authority and the concessionaire, the city or authority may select and certify to the Board a different concessionaire which concessionaire shall apply to the Board for a new license. If the applicant meets the requirements of the Board as herein provided, a new license shall thereupon be issued.

(i) If any trade show and convention license is suspended, the offer in compromise shall be accepted at the same rate as provided for existing restaurant liquor licenses not in excess of one hundred days. If any trade show and convention license is revoked, the board shall issue a new license to any qualified applicant without regard to the prohibition in section 471 against the grant of a license at the same premises for a period of at least one year.

**Section 409. Sacramental Wine Licenses; Fees; Privileges; Restrictions.**—(a) Subject to the provisions of this act in general and more particularly to the following provisions of this section, the board shall issue sacramental wine licenses to qualified applicants.

(b) *(As amended by Act 702 of September 28, 1961, P. L. 1728)* Every applicant for a sacramental wine license shall file a written application with the board in such form as the board shall from time to time prescribe, which shall be accompanied by a filing fee of twenty dollars (\$20), a license fee of one hundred dollars, and a bond as hereinafter prescribed. Every such application shall contain a description of the premises for which the applicant desires a license and shall set forth such other material information as may be required by the board.

(c) If the applicant is a natural person, his application must show that he is a citizen of the United States and a resident of this Commonwealth. If the applicant is an association or partnership, each and every member of the association or partnership must be a citizen of the United States and a resident of this Commonwealth. If the applicant

**Sacramental  
Wine**

**Application**

**Filing fee \$20  
License fee \$100**

**Citizenship**

is a corporation, the application must show that the corporation was created under the laws of Pennsylvania or holds a certificate of authority to transact business in Pennsylvania, and that all officers, directors and stockholders are citizens of the United States.

**Purchasers**

(d) Holders of such licenses may purchase from manufacturers or bring or import into this Commonwealth wine to be used for sacramental or religious purposes, only, and bottle and sell the same to priests, clergymen and rabbis for use in the cathedral, church, synagogue or temple, or for sustaining members of the congregation or members of the faith who attend religious services, duly certified by such priests, clergymen or rabbis. The sale and use of wine for sacramental or religious purposes shall be subject to and in accordance with the regulations of the board.

**Sales**

(e) (*As amended by Act 349 of February 17, 1956, P. L. 1078*) Any wine purchased under the authority of this section shall not be used for any other than sacramental or religious purposes. Sacramental wine may not be sold by any person except the holder of a sacramental wine license.

**Religious use****Records**

(f) Every sacramental wine licensee shall maintain on the licensed premises such records as the board may prescribe. No deliveries of sacramental wine shall be made unless and until an order therefor is on file at the principal place of business in Pennsylvania. All shipments into Pennsylvania of wine to be used for sacramental or religious purposes shall be consigned to the principal place of business maintained by the licensee.

**Delivery****Suspension or revocation**

(g) Any such license may be suspended or revoked by the board upon proof satisfactory to it that the licensee has violated any law of this Commonwealth or any regulation of the board relating to liquor and alcohol. The procedure in such cases shall be the same as for the revocation and suspension of hotel, restaurant and club licenses.

**Importers**

**Section 410. Liquor Importers' Licenses; Fees; Privileges; Restrictions.**—(a) Subject to the provisions of this act in general and more particularly to the following provisions of this section, the board shall issue liquor importers' licenses to qualified applicants.

**Application**

(b) (*As amended by Act 702 of September 28, 1961, P. L. 1728*) Every applicant for an importer's license shall file a written application with the board in such form as the board shall from time to time prescribe, which shall be accompanied by a filing fee of twenty dollars (\$20), a license fee of one hundred dollars, and a bond as hereinafter required. Every such application shall contain a description of the principal place of business for which the applicant desires a license and shall set forth such other material information as may be required by the board.

Filing fee \$20  
License fee  
\$100

Warehouse in  
same municipality

(c) (*As amended by Act 702 of September 28, 1961, P. L. 1728*) The holder of an importer's license may have included in such license one warehouse wherein only his liquor may be kept and stored, located in the same municipality in which

his licensed premises is situate, and not elsewhere, unless such licensee secures from the board a license for each additional storage warehouse desired. The board is authorized and empowered to issue to a holder of an importer's license a license for an additional storage warehouse or warehouses located in this Commonwealth, provided such licensed importer files with the board a separate application for each warehouse in such form and containing such information as the board may from time to time require, accompanied by a filing fee of twenty dollars (\$20), a license fee of twenty-five dollars, and a bond of an approved surety company in the amount of ten thousand dollars. Such bond shall contain the same provisions and conditions as are required in the other license bonds under this article.

(d) If the applicant is a natural person, his application must show that he is a citizen of the United States and a resident of this Commonwealth. If the applicant is an association or partnership, each and every member of the association or partnership must be a citizen of the United States and a resident of this Commonwealth. If the applicant is a corporation, the application must show that the corporation was created under the laws of Pennsylvania or holds a certificate of authority to transact business in Pennsylvania, and that all officers, directors and stockholders are citizens of the United States.

(e) Importers' licenses shall permit the holders thereof to bring or import liquor from other states, foreign countries, or insular possessions of the United States, and purchase liquor from manufacturers located within this Commonwealth, to be sold outside of this Commonwealth or to Pennsylvania Liquor Stores within this Commonwealth, or when in original containers of ten gallons or greater capacity, to licensed manufacturers within this Commonwealth.

All importations of liquor into Pennsylvania by the licensed importer shall be consigned to the Pennsylvania Liquor Control Board or the principal place of business or authorized place of storage maintained by the licensee.

(f) Every importer shall maintain on the licensed premises such records as the board may prescribe. Any such license may be suspended or revoked by the board upon proof satisfactory to it that the licensee has violated any law of this Commonwealth or any regulation of the board relating to liquor and alcohol. The procedure in such cases shall be the same as for the revocation and suspension of hotel, restaurant and club licenses.

**Section 411. Interlocking Business Prohibited.**—(a) No manufacturer and no officer or director of any manufacturer shall at the same time be a holder of a hotel, restaurant or club liquor license, nor be the owner, proprietor or lessor of any place covered by any hotel, restaurant or club liquor license.

(b) No manufacturer, importer or sacramental wine licensee, and no officer or director of a manufacturer, importer or sacramental wine licensee shall own any stock or have

**Additional  
warehouse  
application**

**Filing fee \$20  
License fee \$25  
Bond \$10,000**

**Citizenship  
Resident**

**Purchases**

**Sales**

**Records  
Revocation or  
suspension**

**Interlocking  
Business**

**Manufacturer,  
Retail Liquor  
licensee**

**Manufacturer,  
etc., financial  
interest in  
hotel or res-  
taurant**



any financial interest in any hotel or restaurant licensed under this act.

**Ownership or  
leasehold of  
property**

(c) Excepting as herein provided, no manufacturer, or officer, director, stockholder, agent or employe of a manufacturer shall in any wise be interested, either directly or indirectly, in the ownership or leasehold of any property or the equipment of any property or any mortgage lien against the same, for which a hotel, restaurant or club license is granted; nor shall a manufacturer, importer or sacramental wine licensee, or officer, director, stockholder, agent or employe of a manufacturer, importer or sacramental wine licensee, either directly or indirectly, lend any moneys, credit, or give anything of value or the equivalent thereof to, or guarantee the payment of any bond, mortgage, note or other obligation of, any hotel, restaurant or club licensee, his servant, agent or employe, for equipping, fitting out, or maintaining and conducting, either in whole or in part, a hotel, restaurant or club licensed for the selling of liquor for use and consumption upon the premises.

**Lend money,  
credit, guaran-  
tee note, etc.**

**Ownership of  
property or  
mortgage**

(d) Excepting as herein provided, no hotel licensee, restaurant licensee or club licensee, and no officer, director, stockholder, agent or employe of any such licensee shall in any wise be interested, either directly or indirectly, in the ownership or leasehold of any property or the equipment of any property or any mortgage lien against the same, used by a manufacturer in manufacturing liquor or malt or brewed beverages; nor shall any hotel, restaurant or club licensee, or any officer, director, stockholder, agent or employe of any such licensee, either directly or indirectly, lend any moneys, credit, or give anything of value or the equivalent thereof, to any manufacturer, for equipping, fitting out, or maintaining and conducting, either in whole or in part, an establishment used for the manufacture of liquor or malt or brewed beverages.

**Loans, credit**

**Ownership of  
property**

(e) Except as herein provided, no hotel, restaurant or club licensee, and no officer, director or stockholder, agent or employe of any such licensee shall in any wise be interested, directly or indirectly, in the ownership or leasehold of any property, or the equipment of any property, or any mortgage lien against the same, used by a distributor, importing distributor, retail dispenser, or by an importer or sacramental wine licensee, in the conduct of his business; nor shall any hotel, restaurant or club licensee, or any officer, director, stockholder, agent or employe of any such licensee, either directly or indirectly, lend any moneys, credit, or give anything of value or the equivalent thereof, to any distributor, importing distributor, retail dispenser, importer or sacramental wine licensee, for equipping, fitting out, or maintaining and conducting, either in whole or in part, an establishment used in the conduct of his business.

**Loans, credit**

The purpose of this section is to require a separation of the financial and business interests between manufacturers and holders of hotel or restaurant liquor licenses and, as herein provided, of club licenses, issued under this article, and



no person shall, by any device whatsoever, directly or indirectly, evade the provisions of the section. But in view of existing economic conditions, nothing contained in this section shall be construed to prohibit the ownership of property or conflicting interest by a manufacturer of any place occupied by a licensee under this article after the manufacturer has continuously owned and had a conflicting interest in such place for a period of at least five years prior to July eighteenth, one thousand nine hundred thirty-five: Provided, however, That this clause shall not prohibit any hotel, restaurant or club liquor licensee from owning land which is leased to, and the buildings thereon owned by, a holder of a retail dispenser's license; and nothing in this clause shall prevent the issuance of a retail dispenser's license to a lessee of such lands who owns the buildings thereon.

(B) Malt and Brewed Beverages (Including Manufacturers).

**Section 431. Malt and Brewed Beverages Manufacturers', Distributors' and Importing Distributors' Licenses.**—(a) (*As amended by Act 182 of August 17, 1965, P. L. 346.*)

The board shall issue to any person a resident of this Commonwealth of good repute who applies therefor, pays the licensee fee hereinafter prescribed, and files the bond hereinafter required, a manufacturer's license to produce and manufacture malt or brewed beverages, and to transport, sell and deliver malt or brewed beverages at or from one or more places of manufacture or storage, only in original containers, in quantities of not less than a case of twenty-four containers, each container holding seven fluid ounces or more, or a case of twelve containers, each container holding twenty-four fluid ounces or more, except original containers containing one hundred twenty-eight ounces or more which may be sold separately anywhere within the Commonwealth. Licenses for places of storage shall be limited to those maintained by manufacturers on July eighteenth, one thousand nine hundred thirty-five, and the board shall issue no licenses for places of storage in addition to those maintained on July eighteenth, one thousand nine hundred thirty-five. The application for such license shall be in such form and contain such information as the board shall require. All such licenses shall be granted for the calendar year. Every manufacturer shall keep at his or its principal place of business within the Commonwealth daily permanent records which shall show, (1) the quantities of raw materials received and used in the manufacture of malt or brewed beverages and the quantities of malt or brewed beverages manufactured and stored, (2) the sales of malt or brewed beverages, (3) the quantities of malt or brewed beverages stored for hire or transported for hire by or for the licensee, and (4) the names and addresses of the purchasers or other recipients thereof. Every place licensed as a manufacturer shall be subject to inspection by members of the board or by persons duly authorized and designated by the board, at any and all times of the day or night, as they may deem necessary, for the detection of violations of this act or of the rules and regulations

Land ownership

Manufacturers' Licenses

Minimum Sale

Places of storage

Application

Records

Inspection

Detection of violations

Correctness  
of records

Right to enter

Distributor's  
or Importing  
Distributor's  
License

Minimum Sale

Discretion as  
to Felonies

Purchases

Territorial  
distributing  
rights—  
Out of State  
brewer

of the board, or for the purpose of ascertaining the correctness of the records required to be kept by licensees. The books and records of such licensees shall at all times be open to inspection by members of the board or by persons duly authorized and designated by the board. Members of the board and its duly authorized agents shall have the right, without hindrance, to enter any place which is subject to inspection hereunder or any place where such records are kept for the purpose of making such inspections and making transcripts thereof.

(b) *As amended by Act 391 of January 14, 1952, P.L. 2089; Act 471 of October 23, 1959, P.L. 1360; Act 182 of August 17, 1965, P.L. 346 and Act 179 of October 9, 1967, P.L. 1360.* ) The Board shall issue to any reputable person who applies therefor, pays the license fee hereinafter prescribed, and files the bond hereinafter required, a distributor's or importing distributor's license for the place which such person desires to maintain for the sale of malt or brewed beverages, not for consumption on the premises where sold, and in quantities of not less than twenty-four containers, each container holding seven fluid ounces or more, or twelve containers, each container holding twenty-four fluid ounces or more, except original containers containing one hundred twenty-eight ounces or more which may be sold separately and such containers to be the original containers as prepared for the market by the manufacturer at the place of manufacture. And provided further, That the Board shall have the discretion to refuse a license to any person or to any corporation, partnership or association if such person, or any officer or director of such corporation, or any member or partner of such partnership or association shall have been convicted or found guilty of a felony within a period of five years immediately preceding the date of application for the said license.

Except as hereinafter provided, such license shall authorize the holder thereof to sell or deliver malt or brewed beverages in quantities above specified anywhere within the Commonwealth of Pennsylvania, which, in the case of distributors, have been purchased only from persons licensed under this act as manufacturers or importing distributors, and in the case of importing distributors, have been purchased from manufacturers or persons outside this Commonwealth engaged in the legal sale of malt or brewed beverages or from manufacturers or importing distributors licensed under this article.

Each out of State manufacturer of malt or brewed beverages whose products are sold and delivered in this Commonwealth shall give distributing rights for such products in designated geographical areas to specific importing distributors, and such importing distributor shall not sell or deliver malt or brewed beverages manufactured by the out of State manufacturer to any person issued a license under the provisions of this act whose licensed premises are not located

within the geographical area for which he has been given, distributing rights by such manufacturer: Provided, That the importing distributor holding such distributing rights for such product shall not sell or deliver the same to another importing distributor without first having entered into a written agreement with the said secondary importing distributor setting forth the terms and conditions under which such products are to be resold within the territory granted to the primary importing distributor by the manufacturer.

When a Pennsylvania manufacturer of malt or brewed beverages licensed under this article names or constitutes a distributor or importing distributor as the primary or original supplier of his product, he shall also designate the specific geographical area for which the said distributor or importing distributor is given distributing rights, and such distributor or importing distributor shall not sell or deliver the products of such manufacturer to any person issued a license under the provisions of this act whose licensed premises are not located within the geographical area for which distributing rights have been given to the distributor and importing distributor by the said manufacturer: Provided, That the importing distributor holding such distributing rights for such product shall not sell or deliver the same to another importing distributor without first having entered into a written agreement with the said secondary importing distributor setting forth the terms and conditions under which such products are to be resold within the territory granted to the primary importing distributor by the manufacturer. Nothing herein contained shall be construed to prevent any manufacturer from authorizing the importing distributor holding the distributing rights for a designated geographical area from selling the products of such manufacturer to another importing distributor also holding distributing rights from the same manufacturer for another geographical area, providing such authority be contained in writing and a copy thereof be given to each of the importing distributors so affected.

(c) (As amended by Act 591 of January 14, 1952, P.L. 2089; Act 179 of October 9, 1967, P.L. ; Act 432 of January 18, 1968, P.L. and Act 199 of July 20, 1968, P.L. ; and Act 110 of May 5, 1970, P.L. ) The aforesaid licenses shall be issued only to reputable individuals, partnerships and associations who are, or whose members are, citizens of the United States and have for two years prior to the date of their applications been residents of the Commonwealth of Pennsylvania or to reputable corporations organized or duly registered under the laws of the Commonwealth of Pennsylvania. Such licenses shall be issued to corporations duly organized or registered under the laws of the Commonwealth of Pennsylvania only when it appears that all of the officers and directors of the corporation are citizens of the United States and have been residents of the Commonwealth of Pennsylvania for a period of at least two years prior to the date of application, and that at least fifty-one per centum of the capi-

**Territorial  
distributing  
rights—  
Penna. brewer**

**Citizenship**

**Residents of  
Pa.**

**Officers and  
Directors of  
Corporation**

**Stock owner-  
ship**



# Exception to Residence Requirements

## Retail license

### Discretionary to issue club license

### Citizenship

### Residents of Pa.

### Local option restriction

### Discretion to issue when within 300' of church, etc.

### 200' of other license

### Detriment of neighbor

### When issued

tal stock of such corporation is actually owned by individuals who are citizens of the United States and have been residents of the Commonwealth of Pennsylvania for a period of at least two years prior to the date of application: Provided, That the provisions of this subsection with respect to residence requirements shall not apply to individuals, partners, officers, directors and owners of capital stock, of corporations licensed or applying for licenses and as manufacturers of malt or brewed beverages, nor shall the provisions of this subsection with respect to stockholder requirements apply to corporations licensed or applying for licenses as manufacturers of malt or brewed beverages.

**Section 432. Malt and Brewed Beverages Retail Licenses.**—(a) Subject to the restrictions hereinafter provided in this act, and upon being satisfied of the truth of the statements in the application, that the premises and the applicant meet all the requirements of this act and the regulations of the board, that the applicant seeks a license for a reputable hotel, eating place or club, as defined in this act, the board shall, in the case of a hotel or eating place, grant and issue, and in the case of a club may, in its discretion, issue or refuse the applicant a retail dispenser's license.

(b) In the case of hotels and eating places, licenses shall be issued only to reputable persons who are citizens of the United States and have for two years been residents of the Commonwealth of Pennsylvania at the date of their application, or to reputable corporations organized or duly registered under the laws of the Commonwealth of Pennsylvania, all of whose officers and directors are citizens of the United States. In the case of incorporated clubs, licenses shall be issued only to those incorporated under the laws of Pennsylvania.

(c) *(As amended by Act 619 of January 19, 1952, P. L. 2170)* No retail dispenser's licenses shall be granted or renewed upon their expiration in any municipality in which the electors shall vote, as hereinafter provided, against the licensing therein of places where malt or brewed beverages may be sold for consumption on the premises where sold.

(d) *(As amended by Act 244 of June 19, 1961, P. L. 482 and Act 177 of October 9, 1967, P. L. )* The Board shall, in its discretion, grant or refuse any new license or the transfer of any license to a new location if such place proposed to be licensed is within three hundred feet of any church, hospital, charitable institution, school, or public playground, or if such new license or transfer is applied for a place which is within two hundred feet of any other premises which is licensed by the board, or if such new license or transfer is applied for a place where the principal business conducted is the sale of liquid fuels and oil. The board shall refuse any application for a new license or the transfer of any license to a new location if, in the board's opinion, such new license or transfer would be detrimental to the welfare, health, peace and morals of the inhabitants of the neighborhood within a radius of five hundred feet of the place to be licensed. The board shall not issue new

licenses, except as herein otherwise provided, in any license district more than twice each license year, effective from specific dates fixed by the board, and new licenses shall not be granted unless the application therefor shall have been filed at least thirty days before the effective date of the license. Nothing herein contained shall prohibit the board from issuing a new license for the balance of any unexpired term in any license district to any applicant in such district, who shall have become eligible to hold such license as the result of legislative enactment, when such enactment shall have taken place during the license term of that district for which application is made, or within the thirty days immediately preceding such term: And provided further, That the Board shall have the discretion to refuse a license to any person or to any corporation, partnership or association if such person, or any officer or director of such corporation, or any member or partner of such partnership or association shall have been convicted or found guilty of a felony within a period of five years immediately preceding the date of application for the said license.

(e) *(As amended by Act 244 of June 19, 1961, P. L. 482)* Every applicant for a new or for the transfer of an existing license to another premises not then licensed shall post, for a period of at least fifteen days beginning with the day the application is filed with the board, in a conspicuous place on the outside of the premises or in a window plainly visible from the outside of the premises for which the license is applied or at the proposed new location, a notice of such application, in such form, of such size, and containing such provisions as the board may require by its regulations. Proof of the posting of such notice shall be filed with the board.

**Section 433. Public Service Licenses.**—The board may issue public service malt and brewed beverage licenses to a railroad, pullman or steamship company permitting malt or brewed beverages to be sold at retail in dining, club or buffet cars, or the dining compartments of steamships or vessels, for consumption on the trains, steamships or vessels wherever operated in the State, except when standing in stations or terminals within a municipality wherein retail sales are prohibited. Such licenses shall only be granted to reputable persons and for fit places. The board may issue a master license to railroad or pullman companies to cover the maximum number of cars which the company shall estimate that it will operate within the Commonwealth on any one day. Such licensees shall file monthly reports with the board showing the maximum number of cars operated at any time on any day during the preceding month, and if it appears that more cars have been operated than covered by its license it shall forthwith remit to the board the sum of ten dollars for each extra car so operated. The board shall have the power to suspend or revoke any such licenses for cause after granting a hearing thereon to the licensee. Any person aggrieved by the decision of the board in refusing, suspending or revoking any such license may appeal to the court of quarter sessions of Dauphin County in the same manner as provided in this article for appeals from refusals of licenses.

**Filing time**

**New laws**

**Discretion as to Felonies**

**Notice to be posted**

**Proof of posting  
Public Service License**

**Privileges**

**Master license**

**Revocation**

**Appeal**



**Stadium or  
Arena Permits****Seating  
accommo-  
dations****Cities of  
Second Class****Sales****Application****Reputation  
Citizenship****Residents of  
Pa.****Fees  
Bond****Permit  
period**

Section 433.1. (As added by Act 275 of July 10, 1961 P.L. 561) **Stadium or Arena Permits.** (a) (As amended by Act 247 of November 17, 1967, P.L. ) The Board is hereby authorized to issue, in cities of the first and second class, special permits allowing the holders thereof to make retail sales of malt or brewed beverages in shatterproof containers at all events on premises principally utilized for competition of professional and amateur athletes and other types of entertainment having an available seating capacity of twelve thousand or more. Provided, however, That in cities of the second class this section shall be applicable only to premises owned, leased or operated by any authority created under the act of July 29, 1953 (P.L. 1034), known as the "Public Auditorium Authorities Law." Such sales may be made only to adults and only on days other than Sunday when the premises are so used and only during the period from one hour before the start of and ending one-half hour after the close of the event on the premises.

(b) (As amended by Act 247 of November 17, 1967 P.L. ) The owner or lessee or a concessionaire of any such premises may make application for a permit. The aforesaid permits shall be issued only to reputable individuals, partnerships and associations, who are or whose members are citizens of the United States and have for two years prior to the date of their applications been residents of the Commonwealth of Pennsylvania, or to reputable corporations organized or duly registered under the laws of the Commonwealth of Pennsylvania, all of whose officers and directors are citizens of the United States. Each applicant shall furnish proof satisfactory to the Board that he is of good repute and financially responsible and that the premises upon which he proposes to do business is a proper place. The applicant shall submit such other information as the Board may require. Applications shall be in writing on forms prescribed by the Board, and signed and sworn to by the applicant. Every application shall be accompanied by an application fee of twenty-five dollars (\$25), a permit fee of one hundred dollars (\$100) and a surety bond in the amount of one thousand dollars (\$1000) conditioned the same as the license bonds required by this act for retail dispense licenses.

(c) (As amended by Act 247 of November 17, 1967 P.L. ) Upon receipt of the application in proper form, the application fee, the permit fee and bond, and upon being satisfied that the applicant is of good repute and financially responsible and that the proposed place of business is proper, the Board shall issue a special per-

mit to the applicant. Only one permit issued under this section shall be in effect on any such premises at any time.

(d) (As amended by Act 247 of November 17, 1967, P. L. ) No permit shall be transferable or assignable. The Board may by regulation fix the permit year and provide for the renewal of such permits. Whenever a permit is revoked, another may be issued for the same premises to another applicant upon compliance with the provisions of this section.

(e) The board shall have the power to refuse the issuance of any permit for cause, and to revoke or suspend any permit for cause or for any violation of the liquor or malt and brewed beverage laws. Any applicant or holder of a permit aggrieved by any ruling of the board or by its refusal to issue a permit, or by its suspension or revocation thereof, shall have the right to a hearing and appeal therefrom in the same manner as provided in sections 464 and 471 of this act authorizing appeals from orders of the board.

**Section 434. License Year.**—(a) Licenses issued under this article to distributors, importing distributors and retail dispensers shall, unless revoked in the manner provided in this act, be valid for the license year which may be established by the board for the particular license district in which the license issues.

(b) Malt or brewed beverage licenses issued under this article to manufacturers and public service companies shall, unless revoked in the manner herein provided, be valid for the calendar year for which they are issued. Licenses to such manufacturers and public service companies may be issued at any time during a calendar year.

**Section 435. (As amended by Act 702 of September 28, 1961, P. L. 1728) Filing of Applications for Distributors', Importing Distributors' and Retail Dispensers' Licenses; Filing Fee.**—Every person intending to apply for a distributor's, importing distributor's or retail dispenser's license, as aforesaid, in any municipality of this Commonwealth, shall file with the board his or its application. All such applications shall be filed at a time to be fixed by the board for the particular license district as set up by the board under the provisions of this act. The applicant shall, at the time of filing the application and bond, pay said board the filing fee of twenty dollars (\$20), as hereinafter specified.

**Section 436. (As amended by Act 244 of June 19, 1961, P. L. 482) Application for Distributors', Importing Distributors' and Retail Dispensers' Licenses.**—Application for distributors', importing distributors' and retail dispensers' licenses, or for the transfer of an existing license to another premises not then licensed, shall contain or have attached thereto the following information and statements:

Transfer not permitted

Refusal, revocation, suspension

Appeal

License district to be established

Filing of application

Filing date

Contents of Application

(a) The name and residence of the applicant and how long he has resided there, and if an association, partnership or corporation, the residences of the members, officers and directors for the period of two years next preceding the date of such application.

(b) (*As amended by Act 244 of June 19, 1961, P. L. 482 and Act 101 of June 29, 1965, P. L. 151*) The particular place for which the license is desired and a detailed description thereof. The description, information and plans referred to in this subsection shall show the premises or the proposed location for the construction of the premises at the time the application is made, and shall show any alterations proposed to be made thereto, or the new building proposed to be constructed after the approval by the board of the application for a license, or for the transfer of an existing license to another premises not then licensed. No physical alterations, improvements or changes shall be required to be made to any hotel, eating place or club, nor shall any new building for any such purpose be required to be constructed until approval of the application for license or for the transfer of an existing license to another premises not then licensed by the board. After approval of the application, the licensee shall make the physical alterations, improvements and changes to the licensed premises, or shall construct the new building in the manner specified by the board at the time of approval. The licensee shall not transact any business under the license until the board has approved the completed physical alterations, improvements and changes of the licensed premises or the completed construction of the new building as conforming to the specifications required by the board at the time of issuance or transfer of the license and is satisfied that the premises meet the requirements for a distributor's or importing distributor's license as set forth in this act or that the establishment is an eating place, hotel, or club as defined by this act. The board may require that all such alterations or construction or conformity to definition be completed within six months from the time of issuance or transfer of the license. Failure to comply with these requirements shall be considered cause for revocation of the license. No such license shall be transferable between the time of issuance or transfer of the license and the approval of the completed alterations or construction by the board and full compliance by the licensee with the requirements of this act, except in the case of death of the licensee prior to full compliance with all of the aforementioned requirements, in which event the license may be transferred by the board as provided in section 468 of this act for the transfer of the license in the case of death of the licensee.

**Proposed  
building or  
alterations**

**Transfer  
prohibited**

(c) Place of birth of applicant, and if a naturalized citizen, where and when naturalized, and if a corporation organized or registered under the laws of the Commonwealth, when and

where incorporated, with the names and addresses of each officer and director, all of whom shall be citizens of the United States; if the application is for a distributor's or importing distributor's license and the applicant therefor is a corporation, the application shall also contain a statement of facts showing the qualifications of the corporation, as hereinbefore required, together with the names and addresses of all stockholders.

(d) Name of owner of premises and his residence.

(e) That the applicant is not, or in case of a partnership or association, that the members or partners are not, and in the case of a corporation, that the officers and directors are not, in any manner pecuniarily interested, either directly or indirectly, in the profits of any other class of business regulated under this article, except as hereinafter permitted.

(f) That applicant is the only person in any manner pecuniarily interested in the business so asked to be licensed, and that no other person shall be in any manner pecuniarily interested therein during the continuance of the license, except as hereinafter permitted.

(g) Whether applicant, or in case of a partnership or association, any member or partner thereof, or in case of a corporation, any officer or director thereof, has during the three years immediately preceding the date of said application had a license for the sale of malt or brewed beverages or spirituous and vinous liquors revoked, or has during the same period been convicted of any criminal offense; and if so, a detailed history thereof.

(h) A full description of that portion of the premises for which license is asked, and if any other business is to be conducted concurrently with the sale and distribution of malt or brewed beverages, a full history of such business, relating the nature thereof, the length of time it has so previously been conducted by the applicant or his predecessor at such location, and such additional information as the board may require.

(i) Every club applicant shall file with and as a part of its application a list of the names and addresses of its members, directors, officers, agents and employes, together with the dates of their admission, election or employment, and such other information with respect to its affairs as the board shall require.

(j) The application must be verified by affidavit of applicant, and if any false statement is intentionally made in any part of the application, the affiant shall be deemed guilty of a misdemeanor and, upon conviction, shall be subject to the penalties provided by this article.

Affidavit

**Section 437. Prohibitions Against the Grant of Licenses.**—(a) The board shall refuse to grant any licenses unless the application therefor contains the information required by this act, and the premises meet such reasonable sanitary requirements as the board, by regulation, shall prescribe.

Sanitary requirements



**Board shall  
refuse to issue  
club license in  
certain cases**

(b) The board shall refuse to grant a license to any club when it appears that the operation of such license would inure to the benefit of individual members, officers, agents or employes of the club, rather than to the benefit of the entire membership of the club.

**Reputable  
individuals**

(c) Licenses shall be granted by the board only to reputable individuals, or to associations, partnerships and corporations whose members or officers and directors are reputable individuals.

**Public office**

(d) No person who holds, either by appointment or election, any public office which involves the duty to enforce any of the penal laws of the United States of America or any of the penal laws of this Commonwealth or any penal ordinance or resolution of any political subdivision of this Commonwealth shall be issued any manufacturer's, importing distributor's, distributor's or retail dispenser's license, nor shall such a person have any interest, directly or indirectly, in any such license.

**No distributor  
on retail  
licensed  
premises**

(e) No distributor's or importing distributor's license shall be issued for any premises in any part of which there is operated any retail license for the sale of liquor or malt or brewed beverages.

**Quota**

(f) *(As added by Act 591 of January 14, 1952, P. L. 2089 and amended by Act 445 of December 22, 1965, P. L. 1149)* No new distributor's or importing distributor's license shall hereafter be granted by the board in any county of the Commonwealth where the combined number of distributor and importing distributor licenses exceeds one license for each fifteen thousand inhabitants of the county in which the license is to be issued: Provided, That a combined total of five such licenses may be granted in any county of the Commonwealth.

Nothing in this subsection shall be construed as denying the right of the board to renew or to transfer existing distributors' or importing distributors' licenses or to exchange a distributor's license for an importing distributor's license or to exchange an importing distributor's license for a distributor's license, upon adjustment of the applicable fee, notwithstanding that the number of such licensed places in the county shall exceed the limitation hereinbefore prescribed: Provided, That no distributor's license or importing distributor's license shall be transferred from one county to another county so long as the quota is filled in the county to which the license is proposed to be transferred.

**More than 1  
retail dispenser  
license**

**Section 438. Number and Kinds of Licenses Allowed Same Licensee.**—(a) Any retail dispenser may be granted licenses to maintain, operate or conduct any number of places for the sale of malt or brewed beverages, but a separate license must be secured for each place where malt or brewed beverages are sold.

(b) No person shall possess or be issued more than one distributor's or importing distributor's license.

**May hold only  
1 class of  
license**

(c) No person shall possess more than one class of license, except that a holder of a retail dispenser's license may also be a holder of a retail liquor license.



**Section 439. Malt or Brewed Beverage License Fees.****Licensee fees**

—No public service license and no license to any manufacturer, distributor, importing distributor or retail dispenser shall be issued under the provisions of this subdivision (B) until the licensee shall have first paid an annual license fee, as follows:

(a) In the case of a manufacturer, the license fee shall be one thousand dollars (\$1,000) for each place of manufacture and shall be paid to the board. The fee for all such licenses when applied for and issued on or after April 1, but prior to July 1, shall be three-fourths of the annual fee; July 1, but prior to October 1, shall be one-half of the annual fee; October 1, but prior to January 1, shall be one quarter of the annual fee.

**Manufacturer**

(b) In the case of a distributor, the license fee shall be four hundred dollars (\$400) and shall be paid to the board.

**Distributor**

(c) In the case of an importing distributor, the license fee shall be nine hundred dollars (\$900) and shall be paid to the board.

**Importing  
Distributor**

(d) In the case of a retail dispenser, except clubs, the license fee shall be graduated according to the population of the municipality in which the place of business is located and shall be paid to the board, as follows:

**Retail dispenser except club**

(1) Less than 10,000	\$100
(2) 10,000 and more, but less than 50,000	\$150
(3) 50,000 and more, but less than 100,000	\$200
(4) 100,000 and more, but less than 150,000	\$250
(5) 150,000 and more	\$300

(e) In the case of a club, the fee shall be twenty-five dollars in all cases and shall be paid to the board.

**Club**

(f) In the case of a public service license for cars, the fee shall be ten dollars per car for the maximum number of cars operated on any one day on which malt or brewed beverages are sold, to be paid to the board.

**Public  
service**

(g) In the case of a public service license for the sale of malt or brewed beverages on a boat or vessel, the fee shall be fifty dollars for each such vessel or boat and shall be paid to the board.

(h) (*As amended by Act 702 of September 28, 1961, P. L. 1728*) The fee for filing applications for licenses and for renewals shall be twenty dollars (\$20) which, together with fees for transfers, shall be paid to the board.

**Filing fee**

(i) The license fees fixed by this section shall be paid before the license or renewal is issued.

**Section 440. (*As amended by Act 182 of August 17, 1965, P. L. 346.*) Sales by Manufacturers of Malt or Brewed Beverages; Minimum Quantities.**—No manufacturer shall sell any malt or brewed beverages for consumption on the premises where sold, nor sell or deliver any such malt or brewed beverages in other than original containers approved as to capacity by the board, nor in quantities of less than a case of twenty-four containers, each container holding seven fluid ounces or more, or a case of twelve con-

**Sale by  
manufacturers**

tainers, each container holding twenty-four fluid ounces or more except original containers containing one hundred twenty-eight ounces or more which may be sold separately; nor shall any manufacturer maintain or operate within the Commonwealth any place or places other than the place or places covered by his or its license where malt or brewed beverages are sold or where orders are taken.

**Sales by distributors and importing distributors**

**Section 441. Distributors' and Importing Distributors', Restrictions on Sales, Storage, etc.**—(a) No distributor or importing distributor shall purchase, receive or resell any malt or brewed beverages except in the original containers as prepared for the market by the manufacturer at the place of manufacture.

**Minimum quantity**

(b) *(As amended by Act 182 of August 17, 1965, P. L. 346)* No distributor or importing distributor shall sell any malt or brewed beverages in quantities of less than a case of twenty-four containers, each container holding seven fluid ounces or more, or a case of twelve containers, each container holding twenty-four fluid ounces or more except original containers containing one hundred twenty-eight ounces or more which may be sold separately: Provided, That no malt or brewed beverages sold or delivered shall be consumed upon the premises of the distributor or importing distributor, or in any place provided for such purpose by such distributor or importing distributor.

**Other place for sales**

(c) No distributor or importing distributor shall maintain or operate any place where sales are made other than that for which the license is granted.

**Places of storage**

(d) No distributor or importing distributor shall maintain any place for the storage of malt or brewed beverages except in the same municipality in which the licensed premises is located and unless the same has been approved by the board. In the event there is no place of cold storage in the same municipality, the board may approve a place of cold storage in the nearest municipality.

**Territorial violations**

(e) *(As added by Act 471 of October 23, 1959, P. L. 1360)* No distributor or importing distributor shall purchase, sell, resell, receive or deliver any malt or brewed beverages, except in strict compliance with the provisions of subsection (b) of section 431 of this act.

**Sales by retail dispensers**

**Section 442. Retail Dispensers' Restrictions on Purchases and Sales.**—(a) No retail dispenser shall purchase or receive any malt or brewed beverages except in original containers as prepared for the market by the manufacturer at the place of manufacture. The retail dispenser may thereafter break the bulk upon the licensed premises and sell or dispense the same for consumption on or off the premises so licensed: Provided, however, That no retail dispenser may sell malt or brewed beverages for consumption off the premises in quantities in excess of one hundred forty-four fluid ounces: Provided, further, That no club licensee may sell any malt or brewed beverages for consumption off the premises where sold or to persons not members of the club.

**Club restrictions**

(b) No retail dispenser shall sell any malt or brewed beverages for consumption on the licensed premises except in a room or rooms or place on the licensed premises at all times accessible to the use and accommodation of the general public, but this section shall not be interpreted to prohibit a retail dispenser from selling malt or brewed beverages in a hotel or club house in any room of such hotel or club house occupied by a bona fide registered guest or member entitled to purchase the same.

Rooms  
accessible  
to public

(c) (As added by Act 183 of October 9, 1967, P.L. )  
For the purpose of this section any person who is an active member of another club which is chartered by the same state or national organization shall have the same rights and privileges as members of the particular club.

**Section 443. Interlocking Business Prohibited.—**(a) No manufacturer of malt or brewed beverages and no officer or director of any such manufacturer shall at the same time be a distributor, importing distributor or retail dispenser, or an officer, director or stockholder or creditor of any distributor, importing distributor or retail dispenser, nor, except as hereinafter provided, be the owner, proprietor or lessor of any place for which a license has been issued for any importing distributor, distributor or retail dispenser, or for which a hotel, restaurant or club liquor license has been issued.

Interlocking  
Business  
Mfr. may not  
be retailer or  
distributor or  
own property  
so licensed

(b) No distributor or importing distributor and no officer or director of any distributor or importing distributor shall at the same time be a manufacturer, a retail dispenser or a liquor licensee, or be an officer, director, stockholder or creditor of a manufacturer, a retail dispenser or a liquor licensee, or, directly or indirectly, own any stock of, or have any financial interest in, or be the owner, proprietor or lessor of, any place covered by any other malt or brewed beverage or liquor license.

Distributor  
may not be  
mfr. or retail  
licensee

(c) No licensee licensed under this subdivision (B) of Article IV and no officer or director of such licensee shall, directly or indirectly, own any stock of, or have any financial interest in, any other class of business licensed under this subdivision.

No interest  
any other class

(d) Excepting as hereinafter provided, no malt or brewed beverage manufacturer, importing distributor or distributor shall in any wise be interested, either directly or indirectly, in the ownership or leasehold of any property or in any mortgage against the same, for which a liquor or retail dispenser's license is granted; nor shall any such manufacturer, importing distributor or distributor, either directly or indirectly, lend any moneys, credit or equivalent thereof to, or guarantee the payment of any bond, mortgage, note or other obligation of, any liquor licensee or retail dispenser, in equipping, fitting out, or maintaining and conducting, either in whole or in part, an establishment or business operated under a liquor or retail dispenser's license, excepting only the usual and customary credits allowed for returning original containers in which malt or brewed beverages were packaged for market by the manufacturer at the place of manufacture.

Mfr. or  
distrib. may  
not be inter-  
ested in retail  
license

Loans, etc.

**Mfgr. not to be interested in mortgage of distrib., etc.**

(e) Excepting as hereinafter provided, no manufacturer of malt or brewed beverages shall in any wise be interested, either directly or indirectly, in the ownership or leasehold of any property or any mortgage lien against the same, for which a distributor's or importing distributor's license is granted; nor shall any such manufacturer, either directly or indirectly, lend any moneys, credit, or their equivalent to, or guarantee the payment of any bond, mortgage, note or other obligation of, any distributor or importing distributor, in equipping, fitting out, or maintaining and conducting, either in whole or in part, an establishment or business where malt or brewed beverages are licensed for sale by a distributor or importing distributor, excepting only the usual credits allowed for the return of original containers in which malt or brewed beverages were originally packaged for the market by the manufacturer at the place of manufacture.

**No licensee to receive loan from any other licensee**

(f) No distributor, importing distributor or retail dispenser shall in anywise receive, either directly or indirectly, any credit, loan, moneys or the equivalent thereof from any other licensee, or from any officer, director or firm member of any other licensee, or from or through a subsidiary or affiliate of another licensee, or from any firm, association or corporation, except banking institutions, in which another licensee or any officer, director or firm member of another licensee has a substantial interest or exercises a control of its business policy, for equipping, fitting out, payment of license fee, maintaining and conducting, either in whole or in part, an establishment or business operated under a distributor's, importing distributor's or retail dispenser's license, excepting only the usual and customary credits allowed for the return of original containers in which malt or brewed beverages were packaged for the market by the manufacturer at the place of manufacture.

**Purpose of section**

(g) The purpose of this section is to require a separation of the financial and business interests between the various classes of business regulated by subdivision (B) of this article, and no person or corporation shall, by any device whatsoever, directly or indirectly, evade the provisions of this section. But in view of existing economic conditions, nothing contained in this section shall be construed to prohibit the ownership of property or conflicting interest by a malt or brewed beverage manufacturer of any place occupied by a distributor, importing distributor or retail dispenser after the manufacturer has continuously owned and had a conflicting interest in such place for a period of at least five years prior to the eighteenth day of July, one thousand nine hundred thirty-five.

**Manufacturer further defined**

The term "manufacturer" as used in this section shall include manufacturers of malt or brewed beverages as defined in this act and any person manufacturing any malt or brewed beverages outside of this Commonwealth.

**Reciprocal provisions**

**Section 444. Malt or Brewed Beverages Manufactured Outside This Commonwealth.**—(a) In addition to compliance with all other provisions of this act, the board shall require each person desiring to sell any malt or brewed beverage



ages manufactured outside this Commonwealth to Pennsylvania licensees, and shall require each Pennsylvania licensee who desires to purchase and resell any such malt or brewed beverages, to pay to the board the same fees as are required to be paid by Pennsylvania licensees or by persons or licensees in any state, territory or country outside of Pennsylvania who desires to sell malt or brewed beverages manufactured in Pennsylvania to licensees in such other state, territory or country of origin of such malt or brewed beverages not manufactured in Pennsylvania, and to observe and comply with the same regulations, prohibitions and restrictions as are required of or enforced against Pennsylvania licensees or persons who desire to purchase and resell malt or brewed beverages manufactured in Pennsylvania in such other state, territory or country of origin.

(b) In all cases where the board shall have issued any reciprocal regulations or orders concerning malt or brewed beverages manufactured in any state, territory or country other than Pennsylvania, no Pennsylvania licensee shall purchase any such malt or brewed beverages if their importation has been prohibited, or if not entirely prohibited, unless such regulations or orders have been observed and complied with by the Pennsylvania licensee and by the person from or through whom the Pennsylvania licensee desires to purchase.

(c) Any malt or brewed beverages manufactured outside of Pennsylvania which are sold, transported or possessed in Pennsylvania contrary to any such regulations or orders of the board, or without the payment of the fees herein required, shall be considered contraband and shall be confiscated by the board and disposed of in the same manner as any other illegal liquor or malt or brewed beverages.

(d) Upon learning of the commission by a manufacturer of malt or brewed beverages whose principal place of business is outside this Commonwealth, or by any servant, agent, employe or representative of such manufacturer, within or partly within and partly outside this Commonwealth, of any violation of this act or any laws of this Commonwealth relating to liquor, alcohol or malt or brewed beverages, or of any regulation of the board adopted pursuant thereto, or of any violation of any laws of this Commonwealth or of the United States of America relating to the tax payment of liquor or malt or brewed beverages, the board shall cite such manufacturer to appear before it or its examiner not less than ten nor more than fifteen days from the date of mailing such manufacturer at his principal place of business, wherever located, by registered mail, a notice to show cause why the further importation into this Commonwealth of malt or brewed beverages manufactured by him should not be prohibited.

Citation of  
out-of-state  
manufacturer

(e) Upon such hearing, whether or not an appearance was made by such outside manufacturer, if satisfied that any such violation has occurred, the board is specifically empowered and directed to immediately issue an order prohibiting the importation of malt or brewed beverages manufactured by such manufacturer into this Commonwealth for a period of not less than six months nor more than three years.

Penalty

(f) Notice of such board action shall be given immediately to such manufacturer and to all persons licensed to import malt or brewed beverages within this Commonwealth by

Notice



mailing a copy of such order to such manufacturer at its principal place of business, wherever located, and to such licensees at their licensed premises. Thereafter, it shall be unlawful for any person licensed to import malt or brewed beverages within this Commonwealth to purchase or sell any malt or brewed beverages manufactured by such outside manufacturer during the term of such prohibition.

Misdemeanor

(g) Any violation of such prohibitory order shall be a misdemeanor and shall be punished in the same manner as herein provided for any other violation of this act, and shall also constitute grounds for revocation or suspension of a license to import malt or brewed beverages.

Opinion

(h) In all such cases, the board shall file of record at least a brief statement in the form of an opinion of the reasons for the ruling or order.

Appeal

(i) Any outside manufacturer aggrieved by the action of the board may appeal to the quarter-sessions court of Dauphin County in the same manner as herein provided for appeals from refusals to grant licenses.

### (C) General Provisions Applying to Both Liquor and Malt and Brewed Beverages.

Section 461. \*Limiting Number of Retail Licenses To Be Issued in Each Municipality. (a) *(As amended by Act 220 of August 11, 1959, P.L. 670; Act 702\*\* of December 17, 1959, P.L. 1932; Act 590 of September 16, 1961, P.L. 1337 and Act 95 of September 25, 1969, P.L. )* No

Limitation on retail licenses

licenses shall hereafter be granted by the Board for the retail sale of malt or brewed beverages or the retail sale of liquor and malt or brewed beverages in excess of one of such licenses of any class for each one thousand five hundred inhabitants in any municipality, exclusive of licenses granted to airport restaurants, municipal golf courses and hotels, as defined in this section, and clubs but at least one such license may be granted in each municipality and in each part of a municipality where such municipality is split so that each part thereof is separated by another municipality, except in municipalities where the electors have voted against the granting of any retail licenses. Nothing contained in this section shall be construed as denying the right to the Board to renew or to transfer existing retail licenses of any class notwithstanding that the number of such licensed places in a municipality shall exceed the limitation hereinbefore prescribed; but where such number exceeds the limitation prescribed by this section, no new license, except for

Renewals or transfers

\* Section 2 of Act 426 of December 16, 1965, P. L. provides "Trade show and convention licenses shall not be subject to the provisions . . . of section 461 . . ."

\*\* Act 702 changed the quota of licenses from "1 for each 1000 inhabitants or fraction thereof" to "1 for each 1,500 inhabitants." Section 2 of that act provides: "The provision of this amendment shall not apply to applications for licenses for the retail sale of liquor, or the retail sale of malt or brewed beverages, filed and pending prior to the effective date of this amendment." Section 3 provides: "This act shall take effect February 2, 1960."

hotels, municipal golf courses and airport restaurants as defined in this section, shall be granted so long as said limitation is exceeded.

(b) The board shall have the power to increase the number of licenses in any such municipality which in the opinion of the board is located within a resort area.

(c) The word "hotel" as used in this section shall mean\* any reputable place operated by a responsible person of good reputation where the public may, for a consideration, obtain sleeping accommodations, and which shall have the following number of bedrooms and requirements in each case—at least one-half of the required number of bedrooms shall be regularly available to transient guests seven days weekly, except in resort areas; at least one-third of such bedrooms shall be equipped with hot and cold water, a lavatory, commode, bathtub or shower and a clothes closet; and an additional one-third of the total of such required rooms shall be equipped with lavatory and commode:

(1) In municipalities having a population of less than three thousand, at least twelve permanent bedrooms for the use of guests.

(2) In municipalities having a population of three thousand and more but less than ten thousand inhabitants, at least sixteen permanent bedrooms for the use of guests.

(3) In municipalities having a population of ten thousand and more but less than twenty-five thousand inhabitants, at least thirty permanent bedrooms for the use of guests.

(4) In municipalities having a population of twenty-five thousand and more but less than one hundred thousand inhabitants, at least forty permanent bedrooms for the use of guests.

(5) In municipalities having a population of one hundred thousand and more inhabitants, at least fifty permanent bedrooms for the use of guests.

(6) A public dining room or rooms operated by the same management accommodating at least thirty persons at one time and a kitchen, apart from the dining room or rooms, in which food is regularly prepared for the public.

(7) Each room to be considered a bedroom under the requirements of this section shall have an area of not less than eighty square feet and an outside window.

(8) The provisions of this subsection (c) shall not apply to hotel licenses granted prior to the first day of September, one thousand nine hundred forty-nine, or that have been granted on any application made and pending prior to said date, nor to any renewal or transfer thereof, or hotels under construction or for which a bona fide contract had been entered into for construction prior to said date. In such cases, the provisions of section one of the act, approved the twenty-fourth day of June, one thousand nine hundred thirty-nine (Pamphlet Laws 806) shall continue to apply.

(d) *(As added by Act 220 of August 11, 1959, P. L. 670 and amended by Act 245 of June 19, 1961, P. L. 484)* "Air-

Hotels

Resort areas

Definition  
Hotel

Bedrooms

Airport res-  
taurant defined

\* All hotels licensed under the provisions of the Quota Law of 1939 must continue to meet the minimum requirements prescribed therein, therefore that Act is listed as Part II in this book.

port restaurant," as used in this section shall mean restaurant facilities at any airport for public accommodation, which are owned or operated directly or through lessees by the Commonwealth of Pennsylvania, by any municipal authority, county or city, either severally or jointly, with any other municipal authority, county or city, but shall not include any such restaurant facilities at any airport situated in a municipality where by vote of the electors the retail sale of liquor and malt or brewed beverages is not permitted.

(e) (Added by Act 95 of September 25, 1969, P.L. )

"Municipal golf course" as used in this section shall mean the restaurant facilities at any municipal golf course open for public accommodation, which are owned or operated directly or through lessees by a municipal authority, county or city, severally or jointly with any other municipal authority, county or city, but shall not include any such restaurant facilities at any municipal golf course situate in a municipality where by vote of the electors the retail sale of liquor and malt and brewed beverages is not permitted.

**Section 462. Licensed Places May Be Closed During Period of Emergency.**—The board may, with the approval of the Governor,

**Emergency closing**

(a) Temporarily close all licensed places within any municipality during any period of emergency proclaimed to be such by the Governor.

**Daylight saving time**

(b) (*This paragraph is, in effect, repealed by Act 195 of August 26, 1965, P. L. 378*) Advance by one hour the hours prescribed in this act as the hours during which liquor and malt or brewed beverages may be sold in any municipality during such part of the year when daylight saving time may be observed generally in such municipality.

**License to sell liquor not to be granted to owners of places of amusement**

**Section 463. \*Places of Amusement Not To Be Licensed; Penalty.**—(a) (*As amended by Act 676 of September 22, 1961, P. L. 1599*) No license for the sale of liquor or malt or brewed beverages in any quantity shall be granted to the proprietors, lessees, keepers or managers of any theater, circus, museum or other place of amusement, nor shall any house be licensed for the sale of liquor or malt or brewed beverages which has passage or communication to or with any theater, circus, museum or other place of amusement, and any license granted contrary to this act shall be null and void. Nothing contained in this section shall be construed as denying to the board the right to grant a restaurant liquor license to the owner or operator of a restaurant in a building on a plot of ground owned or possessed under lease by a corporation incorporated under the laws of this Commonwealth and used principally by such corporation for holding outdoor sport events authorized by electors in a referendum in the county wherein such events are held under a license issued as provided by law to such corporation by a department, board or commission of the Commonwealth of Pennsylvania. The restaurant liquor license aforementioned shall be subject to all the conditions and

**Exception—Outdoor sport events**

\* Section 2 of Act 426 of December 16, 1965, P. L. , provides "Trade show and convention licenses shall not be subject to the provisions . . . of section 463 . . ."



restrictions herein applicable to restaurant liquor licenses, except the above prohibition against any passageway or communication between such licensed premises and the place of amusement.

(a.1)(As added by Act 360 of December 1, 1965, P.L. 979 and amended by Act 247 of November 17, 1967, P.L.

) Nothing contained in subsection (a) of this section or in section 102 of this act shall be construed as denying to the Board the right to grant a club or restaurant liquor or malt and brewed beverage license to a club incorporated in this Commonwealth which has been in existence less than one year prior to making application under this section or to a restaurant either of which has a clubhouse or restaurant located in a stadium or arena having an available seating capacity of twelve thousand or more and owned and operated by or pursuant to an agreement with any city of the first class or created and operated under and in compliance with the act of July 29, 1953 (P.L. 1034), known as the "Public Auditorium Authorities Law," and used principally for events at which athletes compete or other types of performers entertain. The club or restaurant liquor or malt and brewed beverage license aforementioned shall be subject to all the conditions and restrictions applicable to such licenses and licenses for places of amusement, except the above prohibition against any passageway or communication between such licensed premises and the place of amusement.

(b) Any proprietor, lessee, keeper or manager of any theater, circus, museum or other place of amusement, or any other person who shall violate the provisions of this section, shall be guilty of a misdemeanor and, upon conviction thereof, shall be sentenced to pay a fine of one hundred dollars and to undergo an imprisonment of not less than thirty days.

**Penalty for violation**

**Section 464. Hearings Upon Refusal of Licenses, Renewals or Transfers; Appeals.**—The board may of its own motion, and shall upon the written request of any applicant for club, hotel or restaurant liquor license, or any applicant for any malt or brewed beverage license other than a public service license, or for renewal or transfer thereof, whose application for such license, renewal or transfer has been refused, fix a time and place for hearing of such application for license or for renewal or transfer thereof, notice of which hearing shall be mailed to the applicant at the address given in his application. Such hearing shall be before the board, a member thereof, or an examiner designated by the board. At such hearing, the board shall present its reasons for its refusal or withholding of license, renewal or transfer thereof. The applicant may appear in person or by counsel, may cross-examine the witnesses for the board and may present evidence which shall likewise be subject to cross-examination by the board. Such hearings shall be stenographically recorded. The examiner shall thereafter report to the board upon such

**Licensee Hearings Appeals**

**Notice of hearing**

**Conduct of hearing**

**Stenographic record**

**Propriety  
of original  
issuance****Notice of  
refusal****Who may  
appeal****Appeal within  
20 days****Appeal de novo****Appeal to  
Superior Court  
within 30 days****Bonds****Surety com-  
pany or cash  
securities**

hearing. The board shall thereupon grant or refuse the license renewal or transfer thereof. In considering the renewal of license, the board shall not refuse any such renewal on the basis of the propriety of the original issuance or any prior renewal of such license. If the board shall refuse such license, renewal or transfer following such hearing, notice in writing of such refusal shall be mailed to the applicant at the address given in his application. In all such cases, the board shall file of record at least a brief statement in the form of an opinion of the reasons for the ruling or order and furnish a copy thereof to the applicant. Any applicant who has appeared before the board or any agent thereof at a hearing, as above provided, who is aggrieved by the refusal of the board to issue any such license or to renew or transfer any such license may appeal, or any church, hospital, charitable institution, school or public playground located within three hundred feet of the premises applied for, aggrieved by the action of the board in granting the issuance of any such license or the transfer of any such license, may take an appeal limited to the question of such grievance within twenty days from date of refusal or grant, to the next quarter sessions of the county in which the premises applied for is located or the county court of Allegheny County. Such appeal shall be upon petition of the aggrieved party, who shall serve a copy thereof upon the board, whereupon a hearing shall be held upon the petition by the court upon ten days notice to the board, which shall be represented in the proceeding by the Department of Justice. The said appeal shall be as a supersedeas unless upon sufficient cause shown the court shall determine otherwise. The court shall hear the application de novo on questions of fact, administrative discretion and such other matters as are involved, at such time as it shall fix, of which notice shall be given to the board. The court shall either sustain or over-rule the action of the board and either order or deny the issuance of a new license or the renewal or transfer of the license to the applicant. The parties to the proceeding may, within thirty days from the filing of the order or decree of said court, appeal therefrom to the Superior Court.

The jurisdiction of the county court of Allegheny County conferred hereby shall be exclusive within the territorial limits of its jurisdiction.

**Section 465. All Licensees to Furnish Bond.**—(a) No license shall be issued to any applicant under the provisions of this article until such applicant has filed with the board an approved bond and a warrant of attorney to confess judgment payable to the Commonwealth of Pennsylvania in the amount hereinafter prescribed.

(b) Bonds of all such applicants shall have as surety a surety company authorized to do business in this Commonwealth, or shall have deposited therewith, as collateral security, cash or negotiable obligations of the United States of America or the Commonwealth of Pennsylvania in the same amount as herein provided for the penal sum of bonds.



all cases where cash or securities in lieu of other surty have been deposited with the board, the depositor shall be permitted to continue the same deposit from year to year on each renewal of license, but in no event shall he be permitted to withdraw his deposit during the time he holds said license, or until six months after the expiration of the license held by him, or while revocation proceedings are pending against such license. All cash or securities received by the board in lieu of other surety shall be turned over by the board to the State Treasurer and held by him. The State Treasurer shall repay or return money or securities deposited with him to the respective depositors only on the order of the board.

Cash or  
securities

(c) No such bond shall be accepted until approved by the board. All such bonds shall be conditioned for the faithful observance of all the laws of this Commonwealth relating to liquor, alcohol and malt or brewed beverages and the regulations of the board. All bonds shall be retained by the board.

(d) The penal sum of the respective bonds filed under the provisions of this section shall be as follows:

Penal sum of  
bonds

(1) Manufacturers of malt or brewed beverages, ten thousand dollars (\$10,000.00) for each place at which the licensee is authorized to manufacture.

(2) Liquor importers, ten thousand dollars (\$10,000.00) for each license.

(3) Sacramental wine licensees, ten thousand dollars (\$10,000.00).

(4) Importing distributors of malt or brewed beverages, two thousand dollars (\$2,000.00).

(5) Hotel, restaurant, club and public service liquor licensees, two thousand dollars (\$2,000.00), but in the case of a railroad or pullman company, such penal sum shall cover every dining, club or buffet car of such company operated under such license.

(6) Distributors of malt or brewed beverages, one thousand dollars (\$1,000.00).

(7) Retail dispensers and public service malt or brewed beverage licensees, one thousand dollars (\$1,000.00) for each place at which the licensee is authorized to sell malt or brewed beverages, except that in the case of railroad or pullman companies, said penal sum shall be one thousand dollars (\$1,000.00), irrespective of the number of licensed cars operated by the company.

(e) Every such bond may be forfeited when a license is revoked and shall be turned over to the Attorney General for collection if and when the licensee's license shall have been revoked and his bond forfeited as provided in this act.

Forfeiture and  
collection

**Section 466. Disposition of Cash and Securities Upon Forfeiture of Bond.**—After notice from the board that any of the aforesaid bonds have been forfeited, the State Treasurer shall immediately pay into the State Stores Fund all cash deposited as collateral with such bond, and when securities have been deposited with such bond, the State Treasurer shall

Forfeiture of  
securities

sell, at private sale, at not less than the prevailing market price, any such securities so deposited as collateral with such forfeited bond. The State Treasurer shall thereafter deposit in the State Stores Fund the net amount realized from the sale of such securities, except that if the amount so realized after deducting proper costs and expenses, is in excess of the penal amount of the bond, such excess shall be paid over to him to the obligor on such forfeited bond.

**Display of license**

**Section 467. Display of License.**—Every license issued under this article shall be constantly and conspicuously displayed under transparent substance on the licensed premises and no license shall authorize sales until this section has been complied with.

**Transfers**

**Section 468. Licenses Not Assignable; Transfers.** (a) (As amended by Act 382 of August 22, 1953, P.L. 1340, Act 297 of January 26, 1956, P.L. 966 and Act 2 of October 20, 1967, P.L. ) Licenses issued under this article may not be assigned. The Board, upon payment of the transfer filing fee and the execution of a new bond, is hereby authorized to transfer any license issued by it under the provisions of this article from one person to another or from one place to another, or both, within the same municipality, as the Board may determine. The Board, in its discretion, may transfer an existing restaurant or club license from one municipality to another within the same county regardless of the quota limitations provided for in this act, if sales of liquor or malt and brew beverages are legal in such other municipality and if the restaurant or club lost the use of the building in which was located due to governmental exercise of the right of eminent domain and no other suitable building can be found in the first municipality. In the case of distributing and importing distributor licenses, the Board may transfer any such license from its place in a municipality to its place in any other municipality within the same county or from one place to another place within the same municipality, or exchange a distributor license for an importing distributor license or an importing distributor license for a distributor license, if the building for which the license is to be issued has, in the case of an importing distributor license, an area under one roof of one thousand five hundred square feet and, in the case of a distributor license, an area under one roof of one thousand square feet: And provided, That, in the case of all transfers of distributor or importing distributor licenses, whether from a place within the same municipality to another place within the same municipality or from a place in a municipality to a place in any other municipality within the same county and, in the case of an exchange of a distributor license

**D-ID, within county**

**Area**

an importing distributor license or an importing distributor license for a distributor license, the premises to be affected by the transfer or exchange shall contain an office separate and apart from the remainder of the premises to be licensed for the purpose of keeping records, required by the board, adequate toilet facilities for employees of the licensee and an entrance on a public thoroughfare: Provided, however, That in the event that the majority of the voting electors of a municipality, at an election held under the provisions of any law so empowering them to do, shall vote against the issuance of distributor or importing distributor licenses in such municipality, the board is hereby authorized to transfer any such distributor or importing distributor license from its place in such municipality to a place in any other municipality within the same county, upon application prior to the expiration of any such license and upon payment of the transfer filing fee and the execution of a new bond; but no transfer shall be made to a person who would not have been eligible to receive the license originally nor for the transaction of business at a place for which the license could not lawfully have been issued originally, nor, except as herein provided, to a place as to which a license has been revoked. No license shall be transferred to any place or property upon which is located, as a business the sale of liquid fuels and oil. Except in cases of emergency such as death, serious illness, or circumstances beyond the control of the licensee, as the board may determine such circumstances to justify its action, transfers of licenses may be made only at times fixed by the board. In the case of the death of a licensee, the board may transfer the license to the surviving spouse or personal representative or to a person designated by him. From any refusal to grant a transfer or upon the grant of any transfer, the party aggrieved shall have the right of appeal to the proper court and therefrom to the Superior Court, in the manner hereinbefore provided.

(b) In the event that any person to whom a license shall have been issued under the provisions of this article shall become insolvent, make an assignment for the benefit of creditors, become a bankrupt by either voluntary or involuntary action, the license of such person shall immediately terminate and be cancelled without any action on the part of the board, and there shall be no refund made or credit given for the unused portion of the license fee for the remainder of the license year for which said license was granted. Thereafter, no license shall be issued by the board for the premises wherein said license was conducted to any assignee, committee, trustee, receiver, or successor of such licensee, until a hearing has been held by the board as in the case of a new application for license. In all such cases, the board shall have the sole and final discretion as to the propriety of the issuance of a license for such premises and as to the time it shall issue and the period for which it shall be issued, and shall have the further power to exact conditions under which said license shall be conducted.

**Office****Toilets****Entrance****Restrictions****Death of  
licensee  
transfer to  
spouse****Appeals from  
refusal****Automatic  
cancellation  
for insolvency,  
bankruptcy**

**Transfer  
Application  
Filing fee**

**Section 469.** (As amended by Act 702 of September 21, 1961, P. L. 1728) **Applications for Transfers; Fees.**

Every applicant for a transfer of a license under the provisions of this article shall file a written application with the board, together with a filing fee of thirty dollars (\$30) if the license to be transferred is a liquor license, and twenty dollars (\$20) if the license is a malt or brewed beverage license. Such applications shall be in such form and shall be filed at such times as the board shall in its regulations prescribe. Each such applicant shall also file an approved bond as required on original applications for such licenses.

Whenever any license is transferred, no license or other fees shall be required from the persons to whom such transfer is made for the balance of the then current license year, except the filing fee as herein provided.

**Bond****File Renewal  
60 days before  
expiration**

**Section 470.** (As amended by Act 87 of August 1, 1969, P. L. ) **Renewal of Licenses; Temporary Provisions for Licensees in Armed Service.** (a) All Applications for renewal of licenses under the provisions of

**New Bond**

this article shall be filed with a new bond, requisite license and filing fees at least sixty days before the expiration date of same: Provided, however, That the Board, in its discretion, may accept a renewal application filed less than sixty days before the expiration date of the license with the required bond and fees, upon reasonable cause shown and the payment of an additional filing fee of one hundred dollars (\$100.00) for late filing.

**File less than  
60 days upon  
reasonable  
cause**

And provided further, That except where the failure to file a renewal application on or before the expiration date has created a license quota vacancy after said expiration date which has been filled by the issuance of a new license, after such expiration date, but, before the Board has received a renewal application within the time prescribed herein the Board, in its discretion, may, after hearing, accept a renewal application filed within ten months after the expiration date of the license with the required bond and fees upon the payment of an additional filing fee of two hundred fifty dollars (\$250.00) for late filing. Where any such renewal application is filed less than sixty days before the expiration date, or subsequent to the expiration date, no license shall issue upon the filing of the renewal application until the matter is finally determined by the Board and if an appeal is taken from the Board's action the courts shall not order the issuance of the renewal license until final determination of the matter by the courts. A renewal application will not be considered filed unless accompanied by a new bond and the requisite filing and license fees and any additional filing fee required by this section. Unless the Board shall have given ten days' previous notice to the applicant of objections to the renewal of his license, based

**10 months after  
expiration date****License  
issuance**



upon violation by the licensee or his servants, agents or employes of any of the laws of the Commonwealth or regulations of the Board relating to the manufacture, transportation, use, storage, importation, possession or sale of liquors, alcohol or malt or brewed beverages, or the conduct of a licensed establishment, or unless the applicant has by his own act become a person of ill repute, or unless the premises do not meet the requirements of this act or the regulations of the Board, the license of a licensee shall be renewed.

(b) In cases where a licensee or his servants, agents or employes are arrested, charged with violating any of the laws of this Commonwealth relating to liquor, alcohol or malt or brewed beverages, and where the board has on file in such cases reports of its enforcement officers or investigators or from other sources that a licensee or his servants, agents or employes have violated any of the aforementioned laws and a proceeding to revoke such licensee's license is or is about to be instituted, and such arrest occurs or report of violations is received or revocation proceeding instituted or about to be instituted during the time a renewal application of such license is pending before the board, the board may, in its discretion, renew the license, notwithstanding such alleged violations, but such renewal license may be revoked if and when the licensee or any of his servants, agents or employes are convicted of or plead guilty to violations under the previous license, as aforesaid, or if and when such previous license is for any reason revoked.

In the event such renewal license is revoked by the board, neither the license fee paid for such license nor any part thereof shall be returned to the licensee, but the license bond

Arrest or  
citation no  
bar to renewal

Renewal may  
be revoked

Fees not  
returnable





filed with the application for such renewal of license shall not be forfeited.

(c) Notwithstanding anything to the contrary in this section, any individual who holds a restaurant or hotel liquor license or a retail dispenser (hotel or eating place) malt or brewed beverage license in effect at the time such individual enters the armed forces of the United States of America, may surrender to the board for safekeeping the said license and, if surrendered, shall furnish the board with documentary evidence as to his entering such armed forces. Upon surrender of the license, the board shall, without the filing of an application for renewal or surety bond, the payment of filing and license fees, renew the said license from year to year and hold the same in its possession for the benefit of such licensee. A license so renewed by the board shall to all intents and purposes be considered as in full force and effect, notwithstanding the licensee is not exercising the privileges thereunder, and shall be returned to the said licensee at any time within one year from the date of his honorable discharge from the armed forces of the United States upon the filing of an application therefor, surety bond, and payment of the filing and license fees as hereinafter provided. The said application for return of license shall be on a form prescribed by the board, accompanied by a filing fee in the sum of ten dollars (\$10.00) and the prescribed license fee, except that when such application is filed after a portion of the then current license term has elapsed, the license fee shall be prorated on a monthly basis for the balance of the license year. Provided, however, That the said license shall not be returned if the electors of the municipality in which the licensed establishment is situate have voted against the granting of retail liquor licenses or against the granting of retail dispenser licenses, as the case may be, under the local option provision of this act. In the event the premises originally covered by the license are not available for occupancy by the licensee at the time he files his application for return of license, as hereinbefore provided, he shall be permitted to file an application for transfer of the license to other premises in the same municipality. Such transfer of the license shall be subject to all of the provisions of this act pertaining to the transfer of such licenses.

This subsection (c) was enacted due to conditions caused by the present war and shall remain in effect only until the termination of said war and one year thereafter.

Section 471. (As amended by Act 583 of September 15, 1961, P. L. 1325 and Act 518 of January 13, 1966, P. L. 1301)

**Revocation and Suspension of Licenses; Fines.**— Upon learning of any violation of this act or any laws of this Commonwealth relating to liquor, alcohol or malt or brewed beverages, or of any regulations of the board adopted pursuant to such laws, of any violation of any laws of this Commonwealth or of the United States of America relating to the tax-payment of liquor, or malt or brewed beverages by any licensee within the scope of this article, his officers, servants, agents or employes, or upon any other sufficient

**Licenses in armed forces**

**Surrender license for safe-keeping**

**Automatic renewal**

**Returnable within 1 year of honorable discharge**

**License fee prorated**

**Revocation and suspension**

**Cause for citation**

**Cite within  
1 year**

**Notice of  
citation**

**Hearings**

**Notice of  
suspension  
or revocation**

**20 day notice  
of suspension  
or revocation**

**Ineligible for  
license for  
3 years if  
revoked**

**Premises  
ineligible for  
1 year after  
revocation**

**Opinion**

**Appeal**

**Discretion  
of appeal  
court**

**Appeal to  
Superior Court**

cause shown, the board may, within one year from the date of such violation or cause appearing, cite such licensee to appear before it or its examiner, not less than ten nor more than sixty days from the date of sending such licensee, by registered mail, a notice addressed to him at his licensed premises, to show cause why such license should not be suspended or revoked or a fine imposed. Hearings on such citations shall be held in the same manner as provided herein for hearings on applications for license. Upon such hearing if satisfied that any such violation has occurred or for other sufficient cause, the board shall immediately suspend or revoke the license, or impose a fine of not less than fifty dollars (\$50) nor more than one thousand dollars (\$1,000), notifying the licensee by registered letter addressed to his licensed premises. In the event the fine is not paid within twenty days of the order the board shall suspend or revoke the license, notifying the licensee by registered mail addressed to his licensed premises. Suspensions and revocations shall not go into effect until twenty days have elapsed from the date of notice of issuance of the board's order during which time the licensee may take an appeal as provided for in this act. When a license is revoked, the licensee's bond may be forfeited by the board. Any licensee whose license is revoked shall be ineligible to have a license under this act until the expiration of three years from the date such license was revoked. In the event the board shall revoke a license, no license shall be granted for the premises or transferred to the premises in which the said license was conducted for a period of at least one year after the date of the revocation of the license conducted in the said premises except in cases where the licensee or a member of his immediate family is not the owner of the premises, in which case the board may, in its discretion, issue or transfer a license within the said year. In all such cases, the board shall file of record at least a brief statement in the form of an opinion of the reasons for the ruling or order. In the event the person who was fined or whose license was suspended or revoked by the board shall feel aggrieved by the action of the board, he shall have the right to appeal to the court of quarter sessions or the county court of Allegheny County in the same manner as herein provided for appeals from refusals to grant licenses. Upon appeal, the court so appealed to shall, in the exercise of its discretion, sustain, reject, alter or modify the findings, conclusions and penalties of the board, based on the findings of fact and conclusions of law as found by the court. The aforesaid appeal shall act as a supersedeas unless upon sufficient cause shown the court shall determine otherwise. The licensee or the board may, within thirty days from the filing of the order or decree of said court, file an appeal therefrom to the Superior Court. No penalty provided by this section shall be imposed by the board or any court for any violations provided for in this act unless the enforcement officer or the board notifies the licensee of its nature and of the date of the alleged violation within ten days of the completion of the investigation which in no event shall exceed ninety days.

If the violation in question is a third or subsequent violation of this act or the act of June 24, 1939 (P. L. 872), known as "The Penal Code," occurring within a period of four years the board shall impose a suspension or revocation.

The jurisdiction of the county court of Allegheny County conferred hereby shall be exclusive within the territorial limits of its jurisdiction.

**Section 472. (As amended by Act 619 of January 19, 1952, P. L. 2170 and Act 272 of August 19, 1953, P. L. 1061 and Act 382 of August 22, 1953, P. L. 1340 and Act 231 of June 28, 1957, P. L. 419) Local Option.**—In any municipality, an

Local option

election may be held on the date of the primary election immediately preceding any municipal election, but not oftener than once in four years, to determine the will of the electors with respect to the granting of liquor licenses to hotels, restaurants and clubs, not oftener than once in four years, with respect to the granting of licenses to retail dispensers of malt and brewed beverages, not oftener than once in four years with respect to granting of licenses to wholesale distributors and importing distributors, or not more than once in four years with respect to the establishment, operation and maintenance by the board of Pennsylvania liquor stores, within the limits of such municipality, under the provisions of this act: Provided, however, Where an election shall have been held at the primary preceding a municipal election in any year, another election may be held under the provisions of this act at the primary occurring the fourth year after such prior election: And provided further, That an election on the question of establishing and operating a State liquor store shall be initiated only in those municipalities that shall have voted against the granting of liquor licenses; and that an election on the question of granting wholesale distributor and importing distributor licenses shall be initiated only in those municipalities that shall have at a previous election voted against the granting of dispenser's licenses. Whenever electors equal to at least twenty-five per centum of the highest vote cast for any office in the municipality at the last preceding general election shall file a petition with the county board of elections of the county for a referendum on the question of granting any of said classes of licenses or the establishment of Pennsylvania liquor stores, the said county board of elections shall cause a question to be placed on the ballots or on the voting machine board and submitted at the primary immediately preceding the municipal election. Separate petitions must be filed for each question to be voted on. Said proceedings shall be in the manner and subject to the provisions of the election laws which relate to the signing, filing and adjudication of nomination petitions, insofar as such provisions are applicable.

Once in 4 years at primary election

25% of vote

Petition

When the question is in respect to the granting of liquor licenses, it shall be in the following form:

Do you favor the granting of liquor licenses for the sale of liquor in of _____ ?	Yes	
	No	



When the question is in respect to the granting of licenses to retail dispensers of malt and brewed beverages, it shall be in the following form:

Do you favor the granting of malt and brewed beverage retail dispenser licenses for consumption on premises where sold in the                      of                      ?	Yes	
	No	

When the question is in respect to the granting of licenses to wholesale distributors of malt or brewed beverages and importing distributors, it shall be in the following form:

Do you favor the granting of malt and brewed beverage wholesale distributor's and importing distributor's licenses not for consumption on premises where sold in the                      of                      ?	Yes	
	No	

When the question is in respect to the establishment, operation and maintenance of Pennsylvania liquor stores it shall be in the following form:

Do you favor the establishment, operation and maintenance of Pennsylvania liquor stores in the                      of                      ?	Yes	
	No	

#### Tie vote

In case of a tie vote, the status quo shall obtain. If a majority of the voting electors on any such question vote "yes," then liquor licenses shall be granted by the board to hotels, restaurants and clubs, or malt and brewed beverage retail dispenser licenses or wholesale distributor's and importing distributor's license for the sale of malt or brewed beverages shall be granted by the board, or the board may establish, operate and maintain Pennsylvania liquor stores, as the case may be, in such municipality, as provided by this act; but if a majority of the electors voting on any such question vote "no," then the board shall have no power to grant or to renew upon their expiration any licenses of the class so voted upon in such municipality; or if the negative vote is on the question in respect to the establishment, operation and maintenance of Pennsylvania liquor stores, the board shall not open and operate a Pennsylvania liquor store in such municipality, nor continue to operate a then existing Pennsylvania liquor store in the municipality for more than two years thereafter or after the expiration of the term of the lease on the premises occupied by such store, whichever period is less, unless and until at a later election a majority of the voting electors vote "yes" on such question.

Clubs located  
in 3 or more  
municipalities

Section 472.1. (As added by Act 590 of September 16, 1961, P. L. 1337) Clubs.—Whenever any club in existence at least five years prior to the time of application for license



owns a contiguous plot of land in more than two municipalities in one or more but less than all of which the granting of liquor licenses has not been prohibited and at least one acre of the plot of land owned by the club is situated in each municipality in which the granting of liquor licenses has not been prohibited, the club may be issued a club liquor license or a catering license by the board if the board finds that the license will not be detrimental to any residential neighborhood. This section shall not be construed to prohibit the issuance of club liquor licenses or catering licenses which may otherwise be issued under the provisions of this act.

**Section 472.2.** (As added by Act 124 of November 18, 1969, P.L. ) **Granting of Liquor Licenses in Certain Municipalities.** (a) In any municipality which has, prior to January 1, 1967, by referendum approved the granting of malt and brewed beverage retail dispensers' licenses and has also thereafter, in a separate and subsequent referendum approved the granting of liquor licenses prior to the effective date of this amendment, the Board may issue to an applicant holding a malt and brewed beverage retail dispenser's license, a liquor license: Provided, That the applicant surrenders for cancellation the malt and brewed beverage retail dispenser's license. The Board shall not issue such a liquor license in excess of one for each one thousand five hundred residents in said municipality and any application for said license shall be filed within two years from the effective date of this amendment.

(b) Nothing in this section shall OTHERWISE affect any existing malt and brewed beverage retail dispenser's license.

(c) The Board may not accept, act upon, or grant an application for a liquor license under this section, when such application, if granted, would cause an excess in the aforesaid quota of one liquor license for each one thousand five hundred residents in said municipality. Nor shall an applicant under this section be required to surrender his malt and brewed beverage retail dispenser's license until and unless the Board has granted his application for a liquor license.

**Section 473.** (As added by Act 518 of January 13, 1966, P. L. 1301) **Public Record.**—(a) Any person having a pecuniary interest in the conduct of business on licensed premises whether that interest is direct or indirect, legal or equitable, individual, corporate, or mutual shall file his name and address with the board on forms provided by the board. In the case of corporate ownership, the secretary of the corporation shall file with the board the names and addresses of all persons having such a corporate pecuniary interest.

(b) The names and addresses required by this section shall be recorded by the board and made available to the public as a public record.

Section 474. (Added by Act 201 of July 20, 1968, P. L.

) Surrender of Club Licenses for Benefit of Licensees. Whenever a club license has been returned to the Board for the benefit of the licensee due to the licensed establishment not having been in operation for any reason whatsoever for a period of time not exceeding fifteen days, the license shall be held by the Board for the benefit of the licensee for a period of time not exceeding one year, or, upon proper application to the Board, for an additional year, and the license shall be revoked at the termination of the period, and transfer of the license shall not be permitted after the termination of the period.

(C.1) Sales by Distributors and Importing Distributors.

Sections 480 to 487 inclusive (Added by Act 495 of August 23, 1961, P. L. 1115 were repealed by Act 343 of November 10, 1965, P. L. 716)

(D) Unlawful Acts; Penalties.

Section 491. Unlawful Acts Relative to Liquor, Alcohol and Liquor Licensees.—

It shall be unlawful—

Exposure and  
sale without  
license

Medicinal  
Administra-  
tion

Prescriptions

Liquors  
conforming to  
National  
Formulary,  
etc.

Possession or  
transportation  
of liquor  
unlawfully  
acquired

(1) Sales of Liquor. For any person, by himself or by an employe or agent, to expose or keep for sale, or directly or indirectly, or upon any pretense or upon any device, to sell or offer to sell any liquor within this Commonwealth, except in accordance with the provisions of this act and the regulations of the board. This clause shall not be construed to prohibit hospitals, physicians, dentists or veterinarians who are licensed and registered under the laws of this Commonwealth from administering liquor in the regular course of their professional work and taking into account the cost of the liquor so administered in making charges for their professional service, or a pharmacist duly licensed and registered under the laws of this Commonwealth from dispensing liquor on a prescription of a duly licensed physician, dentist or veterinarian, or selling medical preparations containing alcohol, or using liquor in compounding prescriptions or medicines, and making a charge for the liquor used in such medicines, or a manufacturing pharmacist or chemist from using liquor in manufacturing preparations unfit for beverage purposes and making a charge for the liquor so used. All such liquor so administered or sold by hospitals, physicians, dentists, veterinarians, pharmacists or chemists shall conform to the Pharmacopoeia of the United States, the National Formulary, or the American Homeopathic Pharmacopoeia.

(2). (As amended by Act 381 of July 26, 1961, P. L. 886 and Act 154 of December 10, 1969, P. L. )

Possession or Transportation of Liquor or Alcohol. For any person, except a manufacturer or the board or the holder of a sacramental wine license or of an importer's license, to possess or transport any liquor or alcohol within this Commonwealth which was not lawfully acquired prior to January first, one thousand nine hundred and thirty-four, or has not been purchased from a Pennsylvania Liquor

Store or in accordance with the board's regulations. The burden shall be upon the person possessing or transporting such liquor or alcohol to prove that it was so acquired. But nothing herein contained shall prohibit the manufacture or possession of wine by any person in his home for consumption of himself, his family and guests and not for sale, not exceeding, during any one calendar year, two hundred gallons, any other law to the contrary notwithstanding. Such wine shall not be manufactured, possessed, offered for sale or sold on any licensed premises.

Home-made  
wine not  
exceeding 200  
gallons

Not on licensed  
premises

None of the provisions herein contained shall prohibit nor shall it be unlawful for any person to import into Pennsylvania, transport or have in his possession, an amount of liquor not exceeding one gallon in volume upon which a State tax has not been paid, and the package in which the liquor is contained does not bear the official seal of the board, if it can be shown to the satisfaction of the board that such person purchased the liquor in a foreign country and was allowed to bring it into the United States duty free. Such liquor shall not be possessed, offered for sale or sold on any licensed premises.

Liquor  
purchased in  
foreign country

Any person violating the provisions of this clause for a first offense involving the possession or transportation in Pennsylvania of any liquor in a package (bottle or other receptacle) which does not bear the official seal of the Board, or wine not purchased from a Pennsylvania Liquor Store, with respect to which satisfactory proof is produced that the required Federal tax has been paid and which was purchased, procured or acquired legally outside of Pennsylvania shall upon conviction thereof in a summary proceeding be sentenced to pay a fine of twenty-five dollars (\$25) for each such package, plus costs of prosecution, or undergo imprisonment for a term not exceeding ninety (90) days. Each full quart or major fraction thereof shall be considered a separate package (bottle or other receptacle) for the purposes of this clause. Such packages of liquor shall be forfeited to the Commonwealth in the manner prescribed in Article VI of this act but the vehicle, boat, vessel, animal or aircraft used in the illegal transportation of such packages shall not be subject to forfeiture: provided, however, that if it is a second or subsequent offense or if it is established that the illegal possession or transportation was in connection with a commercial transaction, then the other provisions of this act providing for prosecution as a misdemeanor and for the forfeiture of the vehicle, boat, vessel, animal or aircraft shall apply.

(3) Purchase of Liquor or Alcohol. For any person within this Commonwealth, by himself or by an employee or agent, to attempt to purchase, or directly or indirectly, or upon any pretense or device whatsoever, to purchase any liquor or alcohol from any person or source other than a Pennsylvania Liquor Store, except in accordance

Purchase from  
illegal source





with the provisions of this act or the regulations of the Board.

(4) (As amended by Act 349 of February 17, 1956, P.L. 1078 and Act 543 of November 19, 1959, B.L. 1532)

**Liquor Packages Without Official Seal.** For any person, except a manufacturer or the Board or the holder of an importer's license, to have or keep any liquor, except wine, within the Commonwealth unless the package (except the decanter or other receptacle containing liquor for immediate consumption) in which the liquor is contained while containing that liquor bears the official seal of the Board as originally affixed in accordance with the provisions of this act or the regulations of the Board.

Possession  
of liquor not  
bearing official  
seal

The use of decanters or other similar receptacles by the licensees shall be permitted only in the case of wines and then only in accordance with the regulations of the Board, but nothing herein contained shall prohibit the manufacture and possession of wine as provided in (2) of this section.

Decanters

(5) (As amended by Act 110 of May 5, 1970, P.L. )

**Failure to Break Empty Liquor Containers.** For any restaurant, hotel or club licensee, his servants, agents or employees, to fail to break any package in which liquors were contained, except those decanter packages that the Board determines to be decorative, within twenty-four hours after the original contents were removed therefrom.

Break bottles

(6) **Sales by Restaurant and Hotel Liquor Licensees.**

For any restaurant or hotel licensee, his servants, agents or employees, to sell any liquor or malt or brewed beverages for consumption on the licensed premises except in a room or rooms or place on the licensed premises at all times accessible to the use and accommodation of the general public, but this section shall not be interpreted to prohibit a hotel licensee, or a restaurant licensee when the restaurant is located in a hotel, from selling liquor or malt or brewed beverages in any room of such hotel occupied by a bona fide guest.

Rooms for  
service

(7) **Sales of Liquor by Manufacturers and Licensed**

**Importers.** For any manufacturer or licensed importer of liquor in this Commonwealth, his agents, servants or employees, to sell or offer to sell any liquor in this Commonwealth except to the board for use in Pennsylvania Liquor Stores, and in the case of a manufacturer, to the holder of a sacramental wine license or an importer's license, but a manufacturer or licensed importer may sell or offer to sell liquor to persons outside of this Commonwealth.

Sales by  
manufacturer  
or importer

(8) **Importation and Sales of Alcohol.** For any person, to import alcohol into this Commonwealth, or to sell alcohol to any person, except in accordance with the regulations of the board.

Alcohol

(9) **Possession of Alcohol.** For any person, to have alcohol in his possession, except in accordance with the provisions of this act and the regulations of the board.

Possession of  
alcohol



**Fortification****Adulteration****Contamination****Refilling  
bottles****Restrictions on  
Importation****Delivery****Vehicles****4" letters****Violation of  
rationing****Offering of  
gifts, etc.****Traffic in board  
seals****Unlawful Acts****Mfg. without  
license****Sale without  
license**

(10) *(As amended by Act 347 of July 18, 1961, P. L. 789)* **Fortifying, Adulterating or Contaminating Liquor.** For any licensee or any employee or agent of a licensee or of the board, to fortify, adulterate or contaminate any liquor, except as permitted by the regulations of the board, or to refill wholly or in part, with any liquid or substance whatsoever, any liquor bottle or other liquor container.

(11) **Importation of Liquor.** For any person, other than the board or the holder of a sacramental wine license or of an importer's license, to import any liquor whatsoever into this Commonwealth, but this section shall not be construed to prohibit railroad and pullman companies from selling liquors purchased outside the Commonwealth in their dining, club and buffet cars which are covered by public service liquor licenses and which are operated in this Commonwealth.

(12) **Delivery of Liquor by Certain Licensees.** For a liquor licensee permitted to deliver liquor, to make any deliveries except in his own vehicles bearing his name, address and license number on each side in letters not smaller than four inches in height, or in the vehicle of another person duly authorized to transport liquor within this Commonwealth.

(13) **Violation of Certain Rules and Regulations of Board.** For any person, to violate any rules and regulations adopted by the board to insure the equitable wholesale and retail sale and distribution of liquor and alcohol through the Pennsylvania Liquor Stores.

(14) **Offering Commission or Gift to Members of Board or State Employee.** For any person selling or offering to sell liquor or alcohol to, or purchasing at wholesale liquor or alcohol from, the board, either directly or indirectly, to pay or offer to pay any commission, profit or remuneration, or to make or offer to make any gift to any member or employee of the board or other employee of the Commonwealth or to anyone on behalf of such member or employee.

(15) *(As added by Act 543 of November 19, 1959, P. L. 1532)* For any person to have, keep, use, utter, barter, buy, sell, traffic in, manufacture or make any official seal of the board or facsimile or reproduction thereof, unless authorized so to do by the provisions of this act or by the regulations or the express consent of the board.

### **Section 492. Unlawful Acts Relative to Malt or Brewed Beverages and Licensees.—**

It shall be unlawful—

(1) **Manufacturing Without License.** For any person, to manufacture malt or brewed beverages, unless such person holds a valid manufacturer's license for such purpose issued by the board.

(2) **Sales of Malt or Brewed Beverages for Consumption on the Premises.** For any person to sell to another for consumption upon the premises where sold or to permit another to consume upon the premises where sold, any malt

or brewed beverages, unless such person holds a valid retail dispenser license or a valid liquor license issued by the board authorizing the sale of malt or brewed beverages for consumption upon such premises.

(3) **Sales of Malt or Brewed Beverages Not for Consumption on the Premises.** For any person, to sell to another any malt or brewed beverages not for consumption upon the premises where sold, unless such person holds a valid license permitting such sale.

Sale without  
license

(4) **Sunday Sales of Malt or Brewed Beverages by Manufacturers, Importing Distributors or Distributors.** For any manufacturer of malt or brewed beverages, importing distributor or distributor, or the servants, agents or employees of the same, to sell, trade or barter in malt or brewed beverages between the hours of twelve o'clock midnight of any Saturday and two o'clock in the forenoon of the following Monday.

Hours of sale

(5) *(As amended by Act 268 of July 30, 1957, P.L. 475, Act 639 of September 19, 1961, P.L. 1507, Act 242 of August 1, 1963, P.L. 456 and Act 302 of November 30, 1967; P.L. )*

**Sales of Malt or Brewed Beverages by Hotels, Eating Places or Public Service Licensees During Prohibited Hours.** For any hotel or eating place holding a retail dispenser's license, or the servants, agents or employees of such licensees, to sell, trade or barter in malt or brewed beverages between the hours of two o'clock antemeridian Sunday and seven o'clock in the forenoon of the following Monday, or between the hours of two o'clock antemeridian and seven o'clock antemeridian of any week day: Provided, That notwithstanding any provision to the contrary, whenever the thirty-first day of December falls on a Sunday such sales of malt or brewed beverages may be made on such day after one o'clock postmeridian and until two o'clock antemeridian of the following day. For any public service licensee authorized to sell malt or brewed beverages or the servants, agents or employees of such licensees to sell, trade or barter in malt or brewed beverages between the hours of two o'clock antemeridian and seven o'clock antemeridian on any day.

Hours of sale

*(This paragraph is, in effect, repealed by Act 195 of August 26, 1965, P. L. 378 )* Any licensee holding a retail dispenser license or a malt or brewed beverage public service license may, by giving notice to the board, advance by one hour the hours herein prescribed as those during which malt or brewed beverages may be sold during such part of the year when daylight saving time is being observed generally in the municipality in which the place of business is located. Any licensee who elects to operate his place of business in accordance with daylight saving time shall post a conspicuous notice in his place of business that he is operating in accordance with daylight saving time.

Daylight  
Saving Time

Posting notice

**Sales on  
election day**

(6) **Sales of Malt or Brewed Beverages on Election Day by Hotels, Eating Places, or Public Service Licensees.** For any hotel or eating place holding a retail dispenser's license or any malt or brewed beverage public service licensee, or his servants, agents or employees, to sell, furnish or give any malt or brewed beverages to any person after two o'clock antemeridian, or until one hour after the time fixed by law for the closing of polling places on days on which a general, municipal, special or primary election is being held.

**Club sales  
between 3 and  
7 A.M.**

(7) **Clubs Selling Between Three O'Clock Antemeridian and Seven O'Clock Antemeridian.** For any club retail dispenser, or its servants, agents or employees, to sell malt or brewed beverages between the hours of three o'clock antemeridian and seven o'clock antemeridian on any day.

**Transporta-  
tion**

(8) **Transportation of Malt or Brewed Beverages.** For any person, to transport malt or brewed beverages except in the original containers, or to transport malt or brewed beverages for another who is engaged in selling either liquor or malt or brewed beverages, unless such person shall hold (a) a license to transport for hire, alcohol, liquor and malt or brewed beverages, as hereinafter provided in this act, or (b) shall hold a permit issued by the board and shall have paid to the board such permit fee, not exceeding one hundred dollars (\$100), and shall have filed with the board a bond in the penal sum of not more than two thousand dollars (\$2000), as may be fixed by the rules and regulations of the board, any other law to the contrary notwithstanding.

**Permit**

(9) **Transportation of Malt or Brewed Beverages by Licensee.** For a malt or brewed beverage licensee, to deliver or transport any malt or brewed beverages, excepting in vehicles bearing the name and address and license number of such licensee painted or affixed on each side of such vehicle in letters no smaller than four inches in height.

**Delivery  
vehicle**

**Lettering 4"  
high**

**Transporta-  
tion and  
import restric-  
tions**

(10) *(This section was repealed "in so far as it requires tax stamps or crowns to be affixed to containers in which malt or brewed beverages are transported" by Section 16 (a) of Act 51 of June 2, 1965, P. L. 64)* **Importing or Transporting Malt or Brewed Beverages Without Tax Stamps.** For any person, to transport within or import any malt or brewed beverages into this Commonwealth, except in accordance with the rules and regulations of the board, or for any person to transport malt or brewed beverages into or within this Commonwealth, unless there shall be affixed to the original containers in which such malt or brewed beverages are transported, stamps or crowns evidencing the payment of the malt liquor tax to the Commonwealth: Provided, however, That this clause shall not be construed to prohibit transportation of malt or brewed beverages through this Commonwealth and not for delivery therein, if such transporting is done in accordance with the rules and regulations of the board.

**Tax payment**

**Delivery with  
other commod-  
ity**

(11) **Delivery of Malt or Brewed Beverages With Other Commodities.** For any manufacturer, importing distributor or distributor, or his servants, agents or employees, except



with board approval, to deliver or transport any malt or brewed beverages in any vehicle in which any other commodity is being transported.

(12) **Distributors and Importing Distributors Engaging in Other Business.** For any distributor or importing distributor, or his servants, agents or employes, without the approval of the board; and then only in accordance with board regulations, to engage in any other business whatsoever, except the business of distributing malt or brewed beverages.

Other business

(13) **Possession or Storage of Liquor or Alcohol by Certain Licensees.** For any distributor, importing distributor or retail dispenser, or his servants, agents or employes, to have in his possession, or to permit the storage of on the licensed premises or in any place contiguous or adjacent thereto accessible to the public or used in connection with the operation of the licensed premises, any alcohol or liquor.

Possession of liquor

(14) **Malt or Brewed Beverage Licensees Dealing in Liquor or Alcohol.** For any malt or brewed beverage licensee, other than a manufacturer, or the servants, agents or employes thereof, to manufacture, import, sell, transport, store, trade or barter in any liquor or alcohol.

Transactions in liquor

(15) **Selling to Persons Doing Illegal Business.** For any malt or brewed beverage licensee, or his servants, agents or employes, to knowingly sell any malt or brewed beverages to any person engaged in the business of illegally selling liquor or malt or brewed beverages.

Sales to illegal vendors

(16) **Distributors and Importing Distributors Failing to Keep Records.** For any importing distributor or distributor engaged in the sale of products, other than malt or brewed beverages, to fail to keep such complete separate records covering in every respect his transactions in malt or brewed beverages as the board shall by regulation require.

Failure to keep records

(17) **Fortifying, Adulterating or Contaminating Malt or Brewed Beverages.** For any person, to fortify, adulterate, contaminate, or in any wise to change the character or purity of, the malt or brewed beverages from that as originally marketed by the manufacturer at the place of manufacture.

Fortification  
Adulteration

**Section 493. Unlawful Acts Relative to Liquor, Malt and Brewed Beverages and Licensees.**—The term "licensee," when used in this section, shall mean those persons licensed under the provisions of Article IV, unless the context clearly indicates otherwise.

It shall be unlawful—

(1) **Furnishing Liquor or Malt or Brewed Beverages to Certain Persons.** For any licensee or the board, or any employe, servant or agent of such licensee or of the board, or any other person, to sell, furnish or give any liquor or malt or brewed beverages, or to permit any liquor or malt or brewed beverages to be sold, furnished or given, to any

Sales to intoxicated persons

**Insane, Minors  
Habitual  
drunkards**

person visibly intoxicated, or to any insane person, or to any minor, or to habitual drunkards, or persons of known intemperate habits.

(2) (As amended by Act 533 of May 15, 1956, P.L. 1587; Act 211 of June 15, 1961, P.L. 423; Act 180 of October 9, 1967, P.L. and Act 11 of February 16, 1970, P.L. ) Purchase or Sale of Liquor or Malt or Brewed Beverages on Credit. For any licensee, his agent, servant or employee, to sell or offer to sell or purchase or receive any liquor or malt or brewed beverages except for cash, excepting credit extended by a hotel or club to bona fide guest or member, or by railroad or Pullman companies in dining, club or buffet cars to passengers for consumption while enroute, holding authorized credit cards issued by railroad or railroad credit bureaus, or by hotel, restaurant and public service licensees to customers holding credit cards issued in accordance with regulations of the Board or credit cards issued by banking institutions subject to State or Federal regulation: Provided further, That nothing herein contained shall be construed to prohibit the use of checks or drafts drawn on a bank, banking institution, trust company or similar depository, organized and existing under the laws of the United States of America or the laws of any state, territory or possession thereof, in payment for any liquor or malt or brewed beverages if the purchaser is the payor of the check or draft, and the licensee is the payee. No right of action shall exist to collect any claim for credit extended contrary to the provisions of this clause. Nothing herein contained shall prohibit a licensee from crediting to a purchaser the actual price charged for original containers returned by the original purchaser as a credit on any sale, or from refunding to any purchaser the amount paid by such purchaser for such containers or as a deposit on containers when title is retained by the vendor if such original containers have been returned to the licensee. Nothing herein contained shall prohibit a manufacturer from extending usual and customary credit for liquor or malt or brewed beverages sold to customers or purchasers who live or maintain places of business outside of the Commonwealth of Pennsylvania, when the liquor or malt or brewed beverages so sold are actually transported and delivered to points outside of the Commonwealth: Provided, however, That as to all transactions affecting malt or brewed beverages to be resold or consumed within the Commonwealth, every licensee shall pay and shall require cash deposits on all returnable original containers which contain not more than one hundred twenty-eight fluid ounces and all such cash deposits shall be refunded upon return of the original containers.

**Credit**

**Licensees'  
checks**

**Exceptions**

**Sales outside  
the State**

**Container  
deposits**



**(3) Exchange of Liquor or Malt or Brewed Beverages For Merchandise, etc.** For any licensee or the board, or any employe, servant or agent of a licensee or of the board, to sell, offer, to sell or furnish any liquor or malt or brewed beverages to any person on a pass book or store order, or to receive from any person any goods, wares, merchandise or other articles in exchange for liquor or malt or brewed beverages.

**Pass-book or  
Store order**

**(4) Peddling Liquor or Malt or Brewed Beverages.** For any person, to hawk or peddle any liquor or malt or brewed beverages in this Commonwealth.

**Hawk and  
peddle**

**(5) Failure to Have Brands as Advertised.** For any licensee, his servants, agents or employes, to advertise or hold out for sale any liquor or malt or brewed beverages by trade name or other designation which would indicate the manufacturer or place of production of the said liquor or malt or brewed beverages, unless he shall actually have on hand and for sale a sufficient quantity of the particular liquor or malt or brewed beverages so advertised to meet requirements to be normally expected as a result of such advertisement or offer.

**Advertising  
without supply**

**(6) Brand or Trade Name on Spigot.** For any licensee, his agents, servants or employes, to furnish or serve any malt or brewed beverages from any faucet, spigot or other dispensing apparatus, unless the trade name or brand of the product served shall appear in full sight of the customer and in legible lettering upon such faucet, spigot, or dispensing apparatus.

**Tap markings**

**(7) Alcoholic Strength on Label of Malt or Brewed Beverages.** For any licensee, or his servants, agents or employes, to transport, sell, deliver or purchase any malt or brewed beverages upon which there shall appear a label or other informative data which in any manner refers to the alcoholic contents of the malt or brewed beverage, or which refers in any manner to the original alcoholic strength, extract or balling proof from which such malt or brewed beverage was produced. This clause shall not be construed to prohibit a manufacturer from designating upon the label or descriptive data the alcoholic content of malt or brewed beverages intended for shipment into another state or territory, when the laws of such state or territory require that the alcoholic content of the malt or brewed beverage must be stated upon the package.

**Alcohol  
content on  
label**

**(8) Advertisements on Labels Giving Alcoholic Content of Malt or Brewed Beverages.** For any manufacturer or other licensee, or his servants, agents or employes, to issue, publish or post, or cause to be issued, published or posted, any advertisement of any malt or brewed beverage including a label which shall refer in any manner to the alcoholic strength of the malt or brewed beverage manufactured, sold or distributed by such licensees, or to use in any advertisement or label such words as "full strength," "extra strength," "high test," "high proof," "pre-war strength," or similar words or phrases, which would lead or induce a consumer to purchase a brand of malt or brewed beverage on the basis of its alcoholic content, or to use in or on any advertisement or label any numeral, unless adequately explained in type of the same

**Advertising  
alcoholic  
strength**

size, prominence and color, or for any licensee to purchase, transport, sell or distribute any malt or brewed beverage advertised or labeled contrary to the provisions of this clause.

#### Free Lunch

(9) **Retail Licensees Furnishing Free Lunch, etc.** For any retail liquor licensee or any retail dispenser, his agent, servants or employes, to furnish, give or sell below a fair cost any lunch to any consumer, except such articles of food as the board may authorize and approve.

#### Amusement Permit

(10) **\*Entertainment on Licensed Premises (Except Clubs); Permits; Fees.** For any licensee, his servants, agents or employes, except club licensees, to permit in any licensed premises or in any place operated in connection therewith, dancing, theatricals or floor shows of any sort, or moving pictures other than television, or such as are exhibited through machines operated by patrons by the deposit of coins, which project pictures on a screen not exceeding in size twenty-four by thirty inches and which forms part of the machine, unless the licensee shall first have obtained from the board a special permit to provide such entertainment, or for any licensee, under any circumstances, to permit in any licensed premises any lewd, immoral or improper entertainment, regardless of whether a permit to provide entertainment has been obtained or not. The board shall have power to provide for the issue of such special permits, and to collect a fee for such permits equal to one-fifth of the annual license fee but not less than twenty-five dollars (\$25). All such fees shall be paid into the State Stores Fund. No such permit shall be issued in any municipality which, by ordinance, prohibits amusements in licensed places. Any violation of this clause shall, in addition to the penalty herein provided, subject the licensee to suspension or revocation of his permit and his license.

#### Lewd entertainment

Fee: 1/5th  
License fee  
not less than  
\$25

#### Employment by other licensees

(11) **Licensees Employed by Others.** For any hotel, restaurant or club liquor licensee, or any malt or brewed beverage licensee, or any servant, agent or employe of such licensee, to be at the same time employed, directly or indirectly, by any other person engaged in the manufacture, sale, transportation or storage of liquor, malt or brewed beverage or alcohol: Provided, That any person (except a licensee or the manager, officer or director of a licensee) who is employed by a Retail licensee to prepare or serve food and beverages may be employed in the same capacity by another Retail licensee during other hours or on other days.

#### Records

(12) **Failure to Have Records on Premises.** For any liquor licensee, or any importing distributor, distributor or retail dispenser, to fail to keep on the licensed premises for a period of at least two years complete and truthful records covering the operation of his licensed business, particularly showing the date of all purchases of liquor and malt or brewed beverages, the actual price paid therefor, and the

\* Section 2 of Act 426 of December 16, 1965, P. L. 1106, provides "Clause (10) of section 493 shall not be applicable when the licensee [Trade show and convention] makes sales of liquor or malt or brewed beverages in the Philadelphia Commercial Museum or the Center for International Visitors notwithstanding the fact that the Museum and the Center may be operating in connection with another place where entertainment is being conducted."

name of the vendor, including State Store receipts, or for any licensee, his servants, agents or employes, to refuse the board or an authorized employe of the board access thereto or the opportunity to make copies of the same when the request is made during business hours.

Access to

(13) **Retail Licensees Employing Minors.** For any hotel, restaurant or club liquor licensee, or any retail dispenser, to employ any minor or to permit any minor to render any service whatever in or about the licensed premises, except in accordance with board regulations, nor shall any entertainer be employed or permitted to perform in any licensed premises in violation of the labor laws of this Commonwealth.

Employment of minors

(14) **Permitting Undesirable Persons or Minors to Frequent Premises.** For any hotel, restaurant or club liquor licensee, or any retail dispenser, his servants, agents or employes, to permit persons of ill repute, known criminals, prostitutes or minors to frequent his licensed premises or any premises operated in connection therewith, except minors accompanied by parents, guardians, or under proper supervision.

Frequenting by known criminals, Prostitutes, Minors

(15) *(As amended by Act 504 of January 14, 1952, P. L. 1865 and Act 170 of June 14, 1957, P. L. 322)* **Cashing Pay Roll, Public Assistance, Unemployment Compensation or Any Other Relief Checks.** For any licensee or his servants, agents or employes to cash pay roll checks or to cash, receive, handle or negotiate in any way Public Assistance, Unemployment Compensation or any other relief checks.

Cashing pay-roll checks

(16) **Furnishing or Delivering Liquor or Malt or Brewed Beverages at Unlawful Hours.** For any licensee, his servants, agents or employes, to give, furnish, trade, barter, serve or deliver any liquor or malt or brewed beverages to any person during hours or on days when the licensee is prohibited by this act from selling liquor or malt or brewed beverages.

Service during prohibited hours or days

(17) **Licensees, etc., Interested or Employed in Manufacturing or Sale of Equipment or Fixtures.** For any licensee, or any officer, director, stockholder, servant, agent or employe of any licensee, to own any interest, directly or indirectly, in or be employed or engaged in any business which involves the manufacture or sale of any equipment, furnishings or fixtures to any hotel, restaurant or club licensees, or to any importing distributors, distributors or retail dispensers:

Interest or ownership in equipment business

Provided, however, That as to malt or brewed beverage licensees, the provisions of this subsection shall not apply to such a conflicting interest if it has existed for a period of not less than three years prior to the first day of January, one thousand nine hundred thirty-seven, and the board shall approve.

Exceptions

(18) **Displaying Price of Liquor or Malt or Brewed Beverages.** For any restaurant, hotel or club liquor licensee, or any importing distributor, distributor or retail dispenser, or the servants, agents or employes of such licensees, to display on the outside of any licensed premises or to display any place within the licensed premises where it can be seen from the outside, any advertisement whatsoever referring, directly or indirectly, to the price at which the licensee will sell liquor or malt or brewed beverages.

Advertising price

**Outside signs**

(19) **Licensee's Outside Advertisements.** For any retail liquor licensee or any retail dispenser, distributor or importing distributor, to display in any manner whatsoever on the outside of his licensed premises, or on any lot of ground on which the licensed premises are situate, or on any building of which the licensed premises are a part, a sign of any kind, printed, painted or electric, advertising any brand of liquor or malt or brewed beverage, and it shall be likewise unlawful for any manufacturer, distributor or importing distributor, to permit the display of any sign which advertises either his products or himself on any lot of ground on which such licensed premises are situate, or on any building of which such licensed premises are a part.

**Inside signs**

(20) **Retail Liquor and Retail Malt or Brewed Beverages Licensee's Inside Advertisements.** For any retail liquor or retail malt or brewed beverages licensee, to display or permit the display in the show window or doorways of his licensed premises, any placard or sign advertising the brands of liquor or malt or brewed beverages produced by any one manufacturer, if the total display area of any such placard or sign advertising the products of any one manufacturer exceeds three hundred square inches. Nothing herein shall prohibit a licensee from displaying inside his licensed premises point of sale displays advertising brand names of products sold by him, other than a window or door display: Provided, That the total cost of all such point of sale advertising matter relating to products of any one manufacturer shall not exceed the sum of twenty dollars (\$20) at any one time, and no single piece of advertising shall exceed a cost of ten dollars (\$10). All such advertising material, including the window and door signs, may be furnished by a manufacturer, distributor or importing distributor.

**Right to Inspect**

(21) **Refusing The Right of Inspection.** For any licensee, or his servants, agents or employes, to refuse the board or any of his authorized employes the right to inspect completely the entire licensed premises at any time during which the premises are open for the transaction of business, or when patrons, guests or members are in that portion of the licensed premises wherein either liquor or malt or brewed beverages are sold.

**Rebates**

(22) **Allowance or Rebate to Induce Purchases.** For any licensee, or his servants, agents or employes, to offer, pay, make or allow, or for any licensee, or his servants, agents or employes, to solicit or receive any allowance or rebate, refunds or concessions, whether in the form of money or otherwise, to induce the purchase of liquor or malt or brewed beverages or any other commodity manufactured or sold by the licensee.

**Inducements**

(23) **Money or Valuables Given to Employes to Influence Actions of Their Employers.** For any licensee, or any agent, employe or representative of any licensee, to give or permit to be given, directly or indirectly, money or any



thing of substantial value, in an effort to induce agents, employees or representatives of customers or prospective customers to influence their employer or principal to purchase or contract to purchase liquor or malt or brewed beverages from the donor of such gift, or to influence such employers or principals to refrain from dealing or contracting to deal with other licensees.

(24) **Things of Value Offered as Inducement.** For any licensee under the provisions of this article, or the board or any manufacturer, or any employee or agent of a manufacturer, licensee or of the board, to offer to give anything of value or to solicit or receive anything of value as a premium for the return of caps, stoppers, corks, stamps or labels taken from any bottle, case, barrel or package containing liquor or malt or brewed beverage, or to offer or give or solicit or receive anything of value as a premium or present to induce the purchase of liquor or malt or brewed beverage, or for any other purpose whatsoever in connection with the sale of such liquor or malt or brewed beverage, or for any licensee, manufacturer or other person to offer or give to trade or consumer buyers any prize, premium, gift or other similar inducement, except advertising novelties of nominal value which the board shall define: Provided, however, That this section shall not apply to the return of any monies specifically deposited for the return of the original container to the owners thereof.

(25) *(As amended by Act 135 of September 25, 1967, P.L. )* **Employment of Females in Licensed Places.** For any licensee or his agent, to employ or permit the employment of any female at his licensed hotel, restaurant or eating place for the purpose of enticing customers, or to encourage them to drink liquor, or make assignations for improper purposes: Provided, That nothing in this section shall be construed to prevent the employment of any female waitress who regularly takes orders for food from serving food, liquor or malt or brewed beverages at tables; also, that nothing shall prevent any such licensees from employing any female stenographer, hotel secretary, clerk, or other employee for their respective positions: Provided, further, That nothing in this section shall be so construed as to prevent the wife of any such licensee or agent or any employed female from mixing or serving liquor or malt or brewed beverages behind the bar of any such licensed place.

Any person violating the provisions of this clause shall be guilty of a misdemeanor and, upon conviction of the same, shall be sentenced to pay a fine of not less than one hundred dollars (\$100), nor more than five hundred dollars (\$500), for each and every female so employed, or undergo an imprisonment of not less than three (3) months, nor more than one (1) year, or either or both, at the discretion of the court having jurisdiction of the case. The board shall have the power to revoke or refuse licenses for violation of this clause.

Things of Value

Prizes or premiums

Exceptions

Employment of females

Exceptions



**Issuance of  
worthless  
checks**

(26) (As added by Act 211 of June 15, 1961, P. L. 423) **Worthless Checks.** For any retail liquor licensee or any retail dispenser, distributor or importing distributor, to make, draw, utter, issue, or deliver, or cause to be made, drawn, uttered, issued or delivered, any check, draft or similar order, for the payment of money in payment for any purchase of malt or brewed beverages, when such retail liquor licensee, retail dispenser, distributor or importing distributor, has not sufficient funds in, or credit with, such bank, banking institution, trust company or other depository, for the payment of such check. Any person who is a licensee under the provisions of this article, who shall receive in payment for malt or brewed beverages sold by him any check, draft or similar order for the payment of money, which is subsequently dishonored by the bank, banking institution, trust company or other depository, upon which drawn, for any reason whatsoever, shall, within five days of receipt of notice of such dishonor, notify by certified mail the person who presented the said worthless check, draft or similar order.

**Recipient to  
give notice****Penalties****Misdemeanor  
Fine \$100-\$500****Subsequent  
offense Fine  
\$300-\$500****Citation  
additional****Identification  
card issuance**

**Section 494. (As amended by Act 583 of May 25, 1956, P. L. 1743) Penalties.**—(a) Any person who shall violate any of the provisions of this article, except as otherwise specifically provided, shall be guilty of a misdemeanor and, upon conviction thereof, shall be sentenced to pay a fine of not less than one hundred dollars (\$100), nor more than five hundred dollars (\$500), and on failure to pay such fine, to imprisonment for not less than one month, nor more than three months, and for any subsequent offense, shall be sentenced to pay a fine of not less than three hundred dollars (\$300), nor more than five hundred dollars (\$500), and to undergo imprisonment for a period not less than three months, nor more than one year.

(b) The right of the board to suspend and revoke licenses granted under this article shall be in addition to the penalty set forth in this section.

**Section 495 (As amended by Act 456 of August 21, 1961, P.L. 1015, and by Act 12 of February 16, 1970, P.L. ) Identification Cards; Licensees and State**

**Liquor Store Employees Saved From Prosecution.**

(a) The Board shall issue to any person who shall have attained the age of twenty-one years, an identification card bearing the said person's date of birth, physical description, photograph, signature, and such other information, as the Board by regulation may determine, attesting to the age of the applicant, upon application therefor by said person, filed no earlier than fifteen days prior to attaining the age of twenty-one. Such cards shall be numbered and a permanent record thereof maintained by the board. The board may, in its discretion, impose a charge for such cards in an amount to be determined by it, and it may, upon proof of loss of such identification card by and upon application of anyone to whom such card may have been issued, issue a duplicate thereof and impose a charge therefor in an amount as it may by regulation prescribe. The board shall have the power to make such regula-

tions as it shall, from time to time, deem proper regarding the size, style and additional content of the identification card, the form and content of any application therefor, the type, style and quantity of proof required to verify the applicant's age, the procedure for receiving and processing such application, the distribution of said card, the charge to be imposed for any card more than one that it shall issue to the same applicant, and all other matters the board shall deem necessary or advisable for the purpose of carrying into effect the provisions of this section.

(b) Such identification card shall be presented by the holder thereof upon request of any State Liquor Store or any licensee, or the servant, agent or employe thereof, for the purpose of aiding such store licensee or the servant, agent or employe to determine whether or not such person is twenty-one years of age and upwards, when such person desires alcoholic beverage at a State Liquor Store or licensed establishment.

(c) In addition to the presentation of such identification card, the agent of the State Liquor Store or the licensee or his servant, agent or employe, shall require the person whose age may be in question to fill in and sign a card in the following form:

**Identification card shall be presented upon request**

**Card to be filled in and signed**

I, ..... 196.....  
 I, ..... hereby represent  
 to ..... a State Store or licensee of  
 the Pennsylvania Liquor Control Board, that I am of full  
 age and discretion and over the age of 21 years, having been  
 born on ..... 19..... at .....  
 This statement is made to induce said store or licensee above  
 named to sell or otherwise furnish alcoholic beverages to the  
 undersigned.

**Serial Number of Identification Card:**

I understand that I am subject to a fine of \$300.00 and  
 sixty days imprisonment for any misrepresentation herein.

(Name)

(Address)

**Witness:**

**Name**

**Address**

Such statement shall be printed upon a 3 inch by 5 inch  
 or 4 inch by 5 inch file card, which card shall be filed alpha-  
 betically by the State Liquor Store or licensee, at or before  
 the close of business on the day of which said certificate is  
 executed, in a file box containing a suitable alphabetical index,  
 and which card shall be subject to examination by any officer,  
 agent or employe of the Liquor Control Board at any and  
 all times.

**Size of file card**

**Statement to be filed**

(d) It shall be unlawful for the owner of an identification  
 card, as defined by this act, to transfer said card to any other  
 person for the purpose of aiding such person to secure alco-  
 holic beverage. Any person who shall transfer such identifi-  
 cation card for the purpose of aiding such transferee to obtain  
 alcoholic beverage shall be guilty of a misdemeanor and, upon  
 conviction thereof, shall be sentenced to pay a fine of not

**Identification card not transferable**

**Penalties**

more than three hundred dollars (\$300), or undergo imprisonment for not more than sixty (60) days. Any person not entitled thereto who shall have unlawfully procured or have issued or transferred to him, as aforesaid, identification card or any person who shall make any false statement on any card required by subsection (c) hereof to be signed by him shall be guilty of a misdemeanor and, upon conviction thereof, shall be sentenced to pay a fine of not more than three hundred dollars (\$300), or undergo imprisonment for not more than sixty (60) days.

Signed statement in possession of licensee may be offered as a defense in civil and criminal prosecutions

(c) The signed statement in the possession of a licensee or an employee of a State Liquor Store may be offered as a defense in all civil and criminal prosecutions for serving a minor, and no penalty shall be imposed if the Liquor Control Board or the courts are satisfied that the licensee or State Liquor Store employee acted in good faith.

Reporting of worthless checks

**Section 496.** (*As added by Act 211 of June 15, 1961, P. L. 423*) **Reporting of Worthless Checks.**—Any person who is a licensee under the provisions of this article, who shall receive in payment for malt or brewed beverages sold by him any check, draft or similar order, for the payment of money, which is subsequently dishonored by the bank, banking institution, trust company or other depository, upon which drawn, for any reason whatsoever, shall, within twenty days of receipt of notice of such dishonor, notify the board thereof. Such notification to the board shall be in such manner and form as the board shall direct.

**Section 497.** (*As added by Act 441 of December 2, 1965, P. L. 1144*) **Liability of Licensees.**—No licensee shall be liable to third persons on account of damages inflicted upon them off of the licensed premises by customers of the licensee unless the customer who inflicts the damage was sold, furnished or given liquor or malt or brewed beverages by the said licensee or his agent, servant or employee when the said customer was visibly intoxicated.

#### ARTICLE V.

#### DISTILLERIES, WINERIES, BONDED WAREHOUSES, BAILEES FOR HIRE AND TRANSPORTERS FOR HIRE.

Unlawful to manufacture, etc., without a license

Exception

**Section 501. License Required.** Except as otherwise provided in this article, and except as otherwise provided in article four as to malt and brewed beverages, it shall be unlawful for any person without a license obtained under provisions of this article to hold in storage as bailee for hire, or transport for hire, any malt or brewed beverage, or to manufacture, produce, distill, develop or use in the process of manufacture, denature, redistill, recover, rectify, blend, reuse, hold in bond, hold in storage as bailee for hire, or transport for hire, within this Commonwealth, any alcohol or liquor, except that a person may manufacture wine out of grapes grown in Pennsylvania by fermentation only and with no alcohol or alcoholic product added thereto by way of fortification and sell the same to a licensed winery.



**Section 502. Exemptions.**—No license hereunder shall be required from any registered pharmacist; or a physician licensed by the State Board of Medical Education and Licensure; or any person who makes and sells vinegar, nonalcoholic cider and fruit juices; or any person who manufactures, stores, sells or transports methanol, propanol, butanol and amanol; or any person who conducts a wholesale drug business; or any person who manufactures alcoholic preparations not fit for use as a beverage, other than denatured alcohol or for beverage purposes; any person engaged in the manufacture; possession or sale of patent, patented or proprietary medicines, toilet, medicinal or antiseptic preparations unfit for beverage purposes, or solutions or flavoring extracts or syrups unfit for beverage purposes; or any person who manufactures or sells paints, varnishes, enamels, lacquers, stains or paint, or varnish removing or reducing compounds, or wood fillers; or any person who manufactures any substance where the alcohol or any liquor is changed into other chemical substances and does not appear in the finished product as alcohol or liquor; or any common carrier by railroad which is subject to regulation by the Pennsylvania Public Utility Commission of the Commonwealth of Pennsylvania, or scheduled common carriers by air of mail and passengers; or any person who sells, stores or transports alcohol or liquor completely denatured, as specified by the board.

Persons  
exempted  
from the  
provisions

**Section 503. Qualifications for License.**—No license shall be issued under the provisions of this article to any person unless (a) in case of individuals, he or she is a citizen of the United States of America, (b) in case of companies or unincorporated associations of individuals, each and every one is a citizen of the United States of America, (c) in case of corporations, each and every stockholder thereof is a citizen of the United States of America.

Issuance to  
certain persons  
forbidden

**Section 504. Applications; Filing Fees.**—(a) (*As amended by Act 702 of September 28, 1961, P. L. 1728*) Every applicant for a license under this article, shall file with the board a written application in such form as the board shall from time to time require. Every such application shall be accompanied by a filing fee of twenty dollars (\$20), the prescribed license fee and the bond hereinafter specified, and shall set forth:

Contents of  
petition for  
license

1. The legal names of the applicant and of the owner of the place where business under the license will be carried on, with their residence addresses by street and number, if a partnership, of each separate partner, and if a corporation, of each individual officer thereof.

2. The exact location of said place of business and of every place to be occupied or used in connection with such business, the productive capacity of each plant where any alcohol or liquor is to be manufactured, produced, distilled, rectified, blended, developed or used in the process of manufacture, denatured, redistilled, recovered, reused, the capacity of every warehouse or other place where such alcohol or liquor or malt or brewed beverage is to be held in bond or stored for hire or the equipment to be used where a transportation business is to be carried on under the license.

3. That each and every one of the applicants is a citizen of the United States of America.

4. Such other relevant information as the board shall from time to time require by rule or regulation.

#### Affidavit

(b) Each application must be verified by affidavit of the applicant made before any officer legally qualified to administer oaths, and if any false statement is wilfully made in any part of said application, the applicant or applicants shall be deemed guilty of a misdemeanor and, upon conviction, shall be subject to the penalties provided by this article.

#### Issuance of license

Section 505. (As amended by Act 272 of July 31, 1968, P.L. ) Licenses Issued. Upon receipt of the application in the form herein provided, the proper fees and an approved bond as herein designated, the Board may grant to such applicant a license to engage in, (a) the operation of a limited winery or a winery; or, (b) the manufacturing, producing, distilling, developing, or using in the process of manufacturing, denaturing, redistilling, recovering, rectifying, blending and reusing of alcohol and liquor; or, (c) the holding in bond of alcohol and liquor; or, (d) the holding in storage, as bailee for hire, of alcohol, liquor and malt or brewed beverages; or, (e) the transporting for hire of alcohol, liquor and malt or brewed beverages.

Section 505.1. (As added by Act 348 of February 17, 1956, P. L. 1077) Bonded Warehouse License Privileges. Restrictions.—Holders of bonded warehouse licenses may:

(a) Receive and store in bond liquor owned by Pennsylvania licensed manufacturers and importers.

(b) Receive and store in bond alcohol owned by Pennsylvania licensed manufacturers.

(c) Receive and store in bond liquor owned by licensees outside this Commonwealth. Such liquor shall be released from the bonded warehouse for delivery within this Commonwealth only to persons holding a liquor importer's license issued by the Pennsylvania Liquor Control Board authorizing the importation of liquor or to other storage facilities or persons outside this Commonwealth.

(d) Receive and store in bond alcohol owned by licensees outside this Commonwealth. Such alcohol shall be released from the bonded warehouse for delivery within this Commonwealth only to persons holding an alcohol permit issued by the Pennsylvania Liquor Control Board authorizing the importation of alcohol or to other storage facilities or persons outside this Commonwealth.

All liquor and alcohol received and stored pursuant to this section shall be in original containers of ten gallons or greater capacity. Liquor and alcohol placed in storage in accordance with the foregoing provisions may remain in storage notwithstanding any change in ownership.

Section 505.2. (As added by Act 272 of July 31, 1968, P.L. ) Limited Wineries. Holders of a limited winery license may:



(1) Produce table wines only from grapes grown in Pennsylvania in an amount not to exceed fifty thousand (50,000) gallons per year.

(2) Sell wine produced by the limited winery on the licensed premises, under such conditions and regulations as the Board may enforce, to the Liquor Control Board, to individuals and to hotel, restaurant, club and public service liquor licensees.

**Section 506. Bonds Required.** (a) No license shall be issued to any such applicant until he has filed with the Board an approved bond, duly executed, payable to the Commonwealth of Pennsylvania, together with a warrant of attorney to confess judgment in the penal sum herein set forth. All such bonds shall be conditioned for the faithful observance of all the laws of this Commonwealth and regulations of the board relating to alcohol, liquor and malt or brewed beverages and the conditions of the license, and shall have as surety a duly authorized surety company, or shall have deposited therewith, as collateral security, cash or negotiable obligations of the United States of America or the Commonwealth of Pennsylvania in the same amount as herein provided for the penal sum of bonds.

Condition of  
Bond

(b) In all cases where cash or securities in lieu of other surety have been deposited with the board, the depositor shall be permitted to continue the same deposit from year to year on each renewal of license, but in no event shall he be permitted to withdraw his deposit during the time he holds said license, or until six months after the expiration of the license held by him, or while revocation proceedings are pending against such licensee.

(c) All cash or securities received by the board in lieu of other surety shall be turned over by the board to the State Treasurer and held by him. The State Treasurer shall repay or return money or securities deposited with him to the respective depositors only on the order of the board.

(d) After notice from the board that such a bond has been forfeited, the State Treasurer shall immediately pay into the State Stores Fund all cash deposited as collateral with such bond, and when securities have been deposited with such a bond, the State Treasurer shall sell at private sale, at not less than the prevailing market price, any such securities so deposited as collateral with any such forfeited bond. The State Treasurer shall thereafter deposit in the State Stores Fund the net amount realized from the sale of such securities, except that if the amount so realized, after deducting proper costs and expenses, is in excess of the penal amount of the bond, such excess shall be paid over by him to the obligor on such forfeited bond.

(e) The penal sum of bonds required to be filed by applicants for license shall be as follows.

Penal sum of  
bonds

In the case of a distillery (manufacturer), the bond shall be in the amount of ten thousand dollars (\$10,000); in the case of a bonded warehouse, a bailee for hire and a transporter for hire, each shall be in the amount of three thousand

dollars (\$3000); and in the case of a winery, shall be in the amount of five thousand dollars (\$5000). Such bonds shall be filed with and retained by the board.

(f) Every such bond shall be turned over to the Department of Justice to be collected if and when the licensee's license shall have been revoked and his bond forfeited as provided in this act.

#### Hearings

#### Section 507. Hearings Upon Refusal of Licenses.—

The board may of its own motion, and shall upon the written request of any applicant for license or for renewal thereof whose application for such license or renewal has been refused, fix a time and place for hearing of such application or renewal, notice of which hearing shall be sent to the applicant by registered mail, at the address given in his application. Such hearing shall be before the board, a member thereof, or an examiner designated by the board. At such hearing, the board shall present its reasons for its refusal or withholding of such license or renewal thereof. The applicant may appear in person or by counsel, may cross-examine the witnesses for the board, and may present evidence which shall likewise be subject to cross-examination by the board. Such hearing shall be stenographically recorded. The examiner shall thereafter report to the board. The board shall thereafter grant or refuse the license or renewal thereof. If the board shall refuse such license or renewal following such hearing, notice in writing of such refusal shall be mailed to the applicant at the address given in his application. In all cases, the board shall file of record at least a brief statement in the form of an opinion of the reasons for the ruling or order.

#### Notice of refusal

#### Fees

Section 508. (*As amended by Act 272 of July 31, 1968, P.L. . .*) License Fees. The annual fee for every license issued to a limited winery or a winery shall be two hundred and fifty dollars (\$250). The annual fee for every license issued to a distillery (manufacturer) shall be twenty-five hundred dollars (\$2500) per annum if the annual production is five hundred thousand (500,000) proof gallons or less, and an additional fee of one hundred dollars (\$100) for each one hundred thousand (100,000) proof gallons or fraction thereof in excess of five hundred thousand (500,000) proof gallons, but for the purpose of determining the amount of the fee payable by a distillery, the annual production of alcohol that is denatured by the manufacturer thereof during the license year in Pennsylvania and not elsewhere shall be excluded, but alcohol or liquor used by the manufacturer thereof during the license year in rectification or blending shall not be excluded, except that no fee for a distillery shall be less than twenty-five hundred dollars (\$2500) per annum. The annual fee for all other licenses shall be one hundred dollars (\$100). The fee for any license when applied for and issued on or after April first, but prior to July first, shall be three-fourths of the annual fee; July first, but prior to October first, shall be one-half of the annual fee; October first, but prior to January first, one-fourth of the annual fee.

#### Apportioned fees

For the purpose of this section, the term "proof gallon" shall mean a gallon liquid which contains one-half its volume of alcohol of a specific gravity of seven thousand nine hundred thirty-nine ten thousandths (.7939) at sixty degrees Fahrenheit.

"Proof gallon,"  
defined

**Section 509. License Must Be Posted; Business Hours.**—Licenses shall be issued by the board under its official seal. Every license so issued must at all times be posted in a conspicuous place where the business is carried on under it, and said place of business must be kept open during general business hours of every day in the year except Sundays and legal holidays.

Issuance of  
licenses  
Posting

**Section 510. Containers To Be Labeled.**—All persons, except as exempted by section five hundred two hereof, manufacturing, producing, distilling, developing or using in the process of manufacture, denaturing, redistilling, recovering, rectifying, blending, reusing, holding in bond, holding in storage as bailee for hire, or transporting for hire of alcohol or liquor under the provisions of this article, shall securely and permanently attach to every container ready for shipment thereof as the same is manufactured, produced, distilled, developed, denatured, redistilled, recovered, rectified, blended, reused, a label stating the name of the manufacturer, kind and quantity of alcohol or liquor contained therein, and the date of its manufacture, together with the number of the license authorizing the manufacture thereof, and all persons possessing such alcohol or liquor in wholesale quantities shall securely keep and maintain such label thereon.

Container  
to be labeled,

**Section 511. License to Specify Each Place Authorized For Use.**—Every license issued under the provision of this article shall specify by definite location every place to be occupied or used in connection with the business to be conducted thereunder. It shall be unlawful for the holder of any license to occupy or use any place in connection with any business authorized under a license other than the place or places designated therein.

Specifications  
of license

Violation

**Section 512. Records To Be Kept.**—Every person holding a license issued under the provisions of this article shall keep on the licensed premises daily permanent records which shall show, (a) the quantities of any alcohol or liquor manufactured, produced, distilled, developed, denatured, redistilled, recovered, reused, stored in bond, stored as bailee for hire, received or used in the process of manufacture by him, and of all other material used in manufacturing or developing any alcohol or liquor; (b) the sales or other disposition of any alcohol, liquor or malt or brewed beverages if covered by said license; (c) the quantities thereof, if any, stored in bond, stored for hire, or transported for hire by or for the licensee; and (d) the names and addresses of the purchasers or other recipients thereof: Provided, however, That persons holding licenses issued under the provisions of this article for the transportation for hire of any alcohol, liquor or malt or brewed beverages shall not be required to keep the above records, but shall keep daily permanent records showing the

Licensee to  
keep records

names and addresses of the persons from whom any alcohol, liquor or malt or brewed beverage was received and to whom delivered, and such other permanent records as the board shall prescribe.

**Inspection  
by board**

**For detection  
of violations**

**For ascertain-  
ing correctness  
of records**

**Books to be  
open for  
inspection**

**Right of  
entry for  
inspection**

**Licensee may  
be cited for  
violations**

**Revocation of  
license**

**Section 513. Premises and Records Subject To Inspection.**—Every place operated under license secured under the provisions of this article where any alcohol, liquor or malt or brewed beverage covered by the license is manufactured, produced, distilled, developed or used in the process of manufacture, denatured, redistilled, rectified, blended, re-covered, reused, held in bond, stored for hire or in connection with a licensee's business, shall be subject to inspection by members of the board or by persons duly authorized and designated by the board at any and all times of the day or night, as they may deem necessary, (a) for the detection of violations of this act or of the rules and regulations of the board promulgated under the authority of this act, or (b) for the purpose of ascertaining the correctness of the records required by this act to be kept by licensees and the books and records of licensees, and the books and records of their customers, in so far as they relate to purchases from said licensees, shall at all times be open to inspection by the members of the board or by persons duly authorized and designated by the board for the purpose of making inspection as authorized by this section. Members of the board and the persons duly authorized and designated by the board shall have the right, without fee or hindrance, to enter any place which is subject to inspection hereunder, or any place where records subject to inspection hereunder are kept, for the purpose of making such inspections.

**Section 514. Suspension and Revocation of License.**—(a) Upon learning of any violation of this act or of any rule or regulation promulgated by the board under the authority of this act, or any violation of any laws of this Commonwealth or of the United States of America relating to the tax payment of alcohol, liquor or malt or brewed beverage by the holder of a license issued under the provisions of this article, or upon other sufficient cause, the board may, within one year from the date of such violation or cause appearing, cite such licensee to appear before it or its examiner not less than ten (10) nor more than fifteen (15) days from the date of sending such licensee, by registered mail, a notice addressed to his licensed premises, to show cause why the license should not be suspended or revoked. Hearings on such citations shall be held in the same manner as provided herein for hearings on applications for license. And upon such hearing, if satisfied that any such violation has occurred or for other sufficient cause, the board shall immediately suspend or revoke such license, notifying the licensee thereof by registered letter addressed to his licensed premises, or to the address given in his application where no licensed premises is maintained in Pennsylvania.

(b) When a license is revoked, the licensee's bond may be forfeited by the board. Any licensee whose license is revoked shall be ineligible to have a license under this act or under any other act relating to alcohol, liquor or malt or brewed beverages until the expiration of three (3) years from the



date such license was revoked. In the event the board shall revoke a license, no license shall be granted for the premises or transferred to the premises in which said license was conducted for a period of at least one (1) year after the date of the revocation of the license conducted in the said premises, except in cases where the licensee or a member of his immediate family is not the owner of the premises, in which case the board may, in its discretion, issue or transfer a license within said year. In all such cases, the board shall file of record at least a brief statement in the form of an opinion of the reasons for the ruling or order.

**Section 515. Appeals.**—Any licensee aggrieved by any decision of the board refusing, suspending or revoking a license under the provisions of this article may appeal within twenty (20) days from the date of refusal, suspension or revocation to the court of quarter sessions of the county in which the licensed premises or the premises to be licensed are located. In the event an applicant or a licensee shall have no place of business established within the Commonwealth, his appeal shall be to the court of quarter sessions of Dauphin County. Such appeal shall be upon petition of the applicant or licensee, as the case may be, who shall serve a copy thereof upon the board. The said appeal shall act as a supersedeas, unless upon sufficient cause shown the court shall determine otherwise. The court shall hear the application de novo at such time as it shall fix, of which notice shall be given to the board. The court shall, in the case of a refusal by the board, either sustain such refusal or order the issuance of the license to the applicant. The parties to such proceeding may, within thirty (30) days from the filing of said court order or decree, appeal therefrom to the Superior Court.

Appeals

**Section 516. Compromise Penalty In Lieu of Suspension.**—In those cases where the board shall suspend a license, the board may accept from the licensee an offer in compromise as a penalty in lieu of such suspension and shall thereupon rescind its order of suspension. In the case of a distillery licensee, the offer in compromise shall be at the rate of one hundred dollars (\$100) for each day of suspension; in the case of a bonded warehouse, bailee for hire and transporter or hire licensees, twenty-five dollars (\$25) for each day; and in the case of a winery licensee, fifty dollars (\$50) for each day. No offer in compromise may be accepted by the board in those cases where the suspension is for a period in excess of one hundred (100) days.

Offer in  
compromise

**Section 517. Expiration of Licenses; Renewals.**—All licenses issued under this article shall expire at the close of the calendar year, but new licenses for the succeeding year shall be issued upon written application therefor, duly verified by affidavit, stating that the facts in the original application are unchanged, and upon payment of the fee as hereinafter provided and the furnishing of a new bond, without the filing of further statements or the furnishing of any further information unless specifically requested by the board: Provided, however, That any such license issued to a corporation shall

Expiration and  
renewal of  
licenses

Provide



**Time for  
application  
renewal**

expire thirty (30) days after any change in the officers of such corporation, unless the name and address of each such new officer of such corporation shall, within that period, be reported to the board by certificate, duly verified. Applications for renewals must be made not less than thirty (30) nor more than sixty (60) days before the first day of January of the ensuing year. All applications for renewal received otherwise shall be treated as original applications.

**Sale, use or  
concealment of  
withdrawn  
alcohol before  
being de-  
natured****Recovery or  
reuse of  
alcohol**

**Section 518. Unlawful Acts.**—(a) It shall be unlawful for any person to transport any illegal alcohol, liquor or malt or brewed beverages.

(b) Whenever any person withdraws or removes any alcohol or liquor which has not been denatured from any distillery, denaturing plant, winery or bonded warehouse for the purpose of denaturing the same, it shall be unlawful for any such person to use, sell or conceal, or attempt to use, sell or conceal, or be concerned in the sale, use or concealment of, any such alcohol or liquor, unless before such sale or use the said alcohol or liquor shall be denatured by adding thereto denaturing material or materials or admixtures thereof which render it unfit for beverage purposes.

(c) It shall be unlawful for any person to recover and reuse or attempt to recover and reuse, by redistillation or by any other process or means whatsoever, any alcohol or liquor from denatured alcohol or from any other liquid, or to knowingly use, sell, conceal, or otherwise dispose of, alcohol or liquor so recovered or redistilled.

**Violations****Misdemeanor  
Penalty**

**Section 519. Penalties.**—Any person or persons who knowingly violate any of the provisions of this article, or any person who shall violate any of the conditions of any license issued under the provisions of this article, or who shall falsify any record or report required by this article to be kept, or who shall violate any rule or regulation of the board or who shall interfere with, hinder or obstruct any inspection authorized by this article, or prevent any member of the board or any person duly authorized and designated by the board from entering any place which such member of the board or such person is authorized by this article to enter for the purpose of making an inspection, or who shall violate any other provision of this article, shall be guilty of a misdemeanor and, upon conviction thereof, shall be sentenced to pay a fine of not less than one hundred dollars (\$100) nor more than five thousand dollars (\$5000), or undergo imprisonment of not more than three (3) years, or both, at the discretion of the court.

**ARTICLE VI.****PROPERTY ILLEGALLY POSSESSED OR USED; FORFEITURES;  
NUISANCES.****(A) Forfeitures.****Forfeiture of  
Property****Property  
rights**

**Section 601.** (As amended by Act 499 of April 20, 1958, P. L. 1508) **Forfeiture of Property Illegally Possessed or Used.**—No property rights shall exist in any liquor, alcohol or malt or brewed beverage illegally manufactured or pro-

ed, or in any still, equipment, material, utensil, vehicle, vessel, animals or aircraft used in the illegal manufacture or illegal transportation of liquor, alcohol or malt brewed beverages, and the same shall be deemed contraband and proceedings for its forfeiture to the Commonwealth shall, at the discretion of the board, be instituted in the manner hereinafter provided. No such property when in the custody of the law shall be seized or taken therefrom on any writ of replevin or like process.

**Section 602. Forfeiture Proceedings.**—(a) The proceedings for the forfeiture or condemnation of all property shall be in rem, in which the Commonwealth shall be the plaintiff and the property the defendant. A petition shall be filed in the court of quarter sessions, verified by oath or affirmation of any officer or citizen, containing the following: (1) a description of the property so seized; (2) a statement of the time and place where seized; (3) the owner, if known; (4) the person or persons in possession, if known; (5) an allegation that the same had been possessed or used or was intended for use in violation of this act; (6) and, a prayer for an order of forfeiture that the same be adjudged forfeited to the Commonwealth, unless cause be shown to the contrary.

Proceedings  
in rem

Petition

(b) A copy of said petition shall be served personally on the owner if he can be found within the jurisdiction of the court, or upon the person or persons in possession at the time of the seizure thereof. Said copy shall have endorsed thereon notice as follows:

Service on  
owner

To the Claimant of Within Described Property: You are required to file an answer to this petition, setting forth your title in and right to possession of said property, within fifteen (15) days from the service hereof; and you are also notified that if you fail to file said answer, a decree of forfeiture and condemnation will be entered against said property.

Said notice shall be signed by petitioner or his attorney, the district attorney or the Attorney General.

(c) If the owner of said property is unknown or outside the jurisdiction of the court and there was no person in possession of said property when seized, or such person so in possession cannot be found within the jurisdiction of the court, notice of said petition shall be given by an advertisement in only one newspaper of general circulation published in the county where such property shall have been seized, for a week for two (2) successive weeks. No other advertisement of any sort shall be necessary, any other law to the contrary notwithstanding. Said notice shall contain a statement of the seizure of said property, with a description thereof, the place and date of seizure, and shall direct any claimants thereof to file a claim therefor on or before a date given in said notice, which date shall not be less than (10) days from the date of the last publication.

Unknown  
owner

(d) Upon the filing of any claim for said property, setting forth a right of possession thereof, the case shall be deemed at issue and a time be fixed for the hearing thereof.

**Burden on claimant**

(e) (As amended by Act 499 of April 20, 1956, P. L. 1508) At the time of said hearing, if the Commonwealth shall produce evidence that the property in question was unlawfully possessed or used, the burden shall be upon the claimant to show (1) that he is the owner of said property, (2) that he lawfully acquired the same, and (3) that it was not unlawfully used or possessed.

In the event such claimant shall prove by competent evidence to the satisfaction of the court that said liquor, alcohol or malt or brewed beverage, or still, equipment, material or utensil, vehicle, boat, vessel, container, animal or aircraft was lawfully acquired, possessed and used, then the court may order the same returned or delivered to the claimant; but if it appears that said liquor, alcohol or malt or brewed beverage or still, equipment, material or utensil was unlawfully possessed or used, the court shall order the same destroyed, delivered to a hospital, or turned over to the board, as hereinafter provided, or if it appears that said vehicle, boat, vessel, container, animal or aircraft was unlawfully possessed or used, the court may, in its discretion, adjudge same forfeited and condemned as hereinafter provided.

**Forfeiture upon petition**

**Section 603.** (As amended by Act 499 of April 20, 1956, P. L. 1508) **Disposition of Forfeited Property.**—If, upon petition as hereinbefore provided and hearing before the court of quarter sessions, it appears that any liquor, alcohol or malt or brewed beverage or still, equipment, material or utensil was so illegally possessed, or used, such liquor, alcohol or malt or brewed beverage or still, equipment, material or utensil shall be adjudged forfeited and condemned, or if it appears that any vehicle, boat, vessel, container, animal or aircraft was so used in the illegal manufacture or transportation of liquor, alcohol or malt or brewed beverage, such property may, in the discretion of the court, be adjudged forfeited and condemned and in such case shall be disposed of as follows:

**Disposition upon conviction**

(a) Upon conviction of any person of a violation of any of the provisions of this act, the court shall order the sheriff to destroy all condemned liquor, alcohol or malt or brewed beverage and property seized or obtained from such defendants, except that the court may order the liquor, alcohol or malt or brewed beverages, or any part thereof, to be delivered to a hospital for its use, and make return to the court of compliance with said order, and any vehicle, container, boat, vessel, animals or aircraft seized under the provisions of this act shall be disposed of as hereinafter provided.

**Disposition upon acquittal**

(b) In any case in which the defendant is acquitted of a violation of this act and denies the ownership or possession thereof, or no claimant appears for same, or appearing, unable to sustain claim thereof, the court shall order all condemned liquor, alcohol and malt or brewed beverages and property (except vehicles, boats, vessels, containers, animals and aircraft) publicly destroyed by the sheriff, except that the court may order the liquor, alcohol or malt or brewed

verages, or any part thereof, to be delivered to a hospital for its use. Return of compliance with said order shall be made by the sheriff to the court.

(c) In the case of any vehicle, boat, vessel, container, animal or aircraft seized under the provisions of this act and condemned, the court shall order the same to be delivered to the board for its use or for sale or disposition by the board, in its discretion. Notice of such sale shall be given in such manner as the board may prescribe. The proceeds of such sale shall be paid into the State Stores Fund.

**Delivery to board**

**Section 604. Motor Vehicle Licenses To Be Revoked.**

In addition to the foregoing provisions, the court may, in its order of condemnation, and in every conviction under this act where it shall appear that liquor, alcohol or malt or brewed beverages were unlawfully transported in a motor vehicle, declare that the license issued by the Department of Revenue for any motor vehicle so forfeited and condemned, or issued to any defendant convicted of transporting liquor, alcohol or malt or brewed beverages in any motor vehicle, shall be forfeited and revoked, and it shall be the duty of the clerk of the court in which such conviction is had and order of condemnation made to certify such conviction to the Secretary of Revenue, who shall suspend or revoke the license issued for such motor vehicles: Provided, That a license may be issued for such motor vehicle to the board or to any purchaser of the vehicle after the sale thereof, as above provided.

**Motor Vehicle License**

**Section 605. Application of Subdivision.**—The provisions of this subdivision shall apply to the disposition of any liquor, alcohol or malt or brewed beverage or property in the custody of the law or of any officer at the time of the passage of this act.

**(B) Nuisances.**

**Section 611. Nuisances; Actions To Enjoin.**—(a) Any room, house, building, boat, vehicle, structure or place, except private home, where liquor, alcohol or malt or brewed beverages are manufactured, possessed, sold, transported, offered for sale, bartered or furnished, or stored in bond, or stored for hire, in violation of this act, and all such liquors, beverages and property kept or used in maintaining the same, are hereby declared to be common nuisances, and any person who maintains such a common nuisance shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to the same penalties provided in section four hundred ninety four of this act.

**Nuisances**

**A misdemeanor**

(b) An action to enjoin any nuisance defined in this act may be brought in the name of the Commonwealth of Pennsylvania by the Attorney General or by the district attorney of the proper county. Such action shall be brought and tried as an action in equity and may be brought in any court having

**Action by Attorney General or District Attorney**



**In equity****Injunction  
to abate  
nuisance****Court order****Penalties**

jurisdiction to hear and determine equity cases within the county in which the offense occurs. If it is made to appear by affidavit or otherwise, to the satisfaction of the court that such nuisance exists, a temporary writ of injunction shall be forthwith issue, restraining the defendant from conducting or permitting the continuance of such nuisance until the conclusion of the proceedings. If a temporary injunction is prayed for, the court may issue an order restraining the defendant and all other persons from removing or in any way interfering with the liquids, beverages or other things used in connection with the violation of this act constituting such nuisance. No bond shall be required in instituting such proceedings. It shall not be necessary for the court to find that the property involved was being unlawfully used, as aforesaid, at the time of the hearing, but on finding that the material allegations of the petition are true, the court shall order that no liquor, alcohol or malt or brewed beverage shall be manufactured, sold, offered for sale, transported, bartered or furnished, or stored in bond, or stored for hire in any room, house, building, structure, boat, vehicle, or place, in any part thereof.

(c). Upon the decree of the court ordering such nuisance to be abated, the court may, upon proper cause shown, order that the room, house, building, structure, boat, vehicle or place shall not be occupied or used for one year thereafter, but the court may, in its discretion, permit it to be occupied or used if the owner, lessee, tenant or occupant thereof shall give bond with sufficient surety to be approved by the court, making the order in the penal and liquidated sum of not less than five hundred dollars (\$500.00), payable to the Commonwealth of Pennsylvania, for use of the county in which such proceedings are instituted, and conditioned that neither liquor, alcohol, nor malt or brewed beverages will thereafter be manufactured, sold, transported, offered for sale, bartered or furnished, or stored in bond, or stored for hire therein, thereon in violation of this act, and that he will pay all fines, costs and damages that may be assessed for any violation of this act upon said property.

**ARTICLE VII.****DEALING IN DISTILLERY BONDED WAREHOUSE CERTIFICATES****(A) Preliminary Provisions.****Definitions****Agent**

**Section 701. Definitions and Interpretation.**—(a) Words used in this article, the following words or phrases, unless the context clearly indicates otherwise, shall have the meanings ascribed to them in this section.

"Agent" shall mean and include every person employed by a distillery certificate broker to sell, offer for sale or delivery, to purchase, exchange, or to enter into agreement for the purchase, sale or exchange, or to solicit subscriptions, orders for, or to undertake to dispose of, or to deal in any manner in, distillery bonded warehouse certificates.



"Fraud," "fraudulent" and "fraudulent practice" shall include any misrepresentation in any manner of a relevant fact not made honestly and in good faith; any promise or representation or prediction as to the future not made honestly and in good faith, or an intentional failure to disclose a material fact; the gaining, directly or indirectly, through the purchase, sale or exchange of distillery bonded warehouse certificates, of any promotion fee or profit, selling or managing commission or profit, so gross and exorbitant as to be unconscionable and fraudulent; and any scheme, device, artifice or investment plan to obtain such an unconscionable profit: Provided, however, That nothing herein shall limit or diminish the full meaning of the terms "fraud" and "fraudulent" as applied or accepted in courts of law or equity.

**Fraud,  
Fraudulent,  
Fraudulent  
Practice**

(b) Nothing contained in this article shall be construed as permitting the holder or owner of a distillery bonded warehouse certificate, as defined in this act, to secure possession of the whiskey or other potable distilled spirits named or designated in such certificate, except in accordance with the provisions of this act and the laws of this Commonwealth hereafter enacted relating to alcohol or alcoholic beverages and the regulations of the board adopted and promulgated thereunder.

**Interpretation**

### (B) Permits.

**Section 702. Unlawful to Act as a Distillery Certificate Broker or to Buy or Sell Distillery Bonded Warehouse Certificate Without a Permit.**—It shall be unlawful for any person, except as hereinafter exempted, directly or through an agent, to sell, purchase, exchange, offer for sale, deliver, enter into agreements for the purchase, sale, exchange, solicit subscriptions to, orders for, undertake to dispose of, deal in any manner in, distillery bonded warehouse certificates, without first having obtained a permit to act as a distillery certificate broker as provided in this article.

**Permit needed**

**Section 703. Authority to Issue Permits to Distillery Certificate Brokers.**—Subject to the provisions of this article and regulations promulgated under this act, the board shall have authority to issue to any reputable financially responsible person whose plan of business in dealing in distillery bonded warehouse certificates is not deemed by the board to constitute "fraudulent practice," as defined herein, a permit to act as distillery certificate broker.

**Authority to  
issue permits**

**Section 704. (As amended by Act 702 of September 28, 1961, P. L. 1728) Application for Permit; Filing Fee.**—Every applicant for a distillery certificate broker permit shall file a written application with the board outlining his plan of business in dealing in distillery bonded warehouse certificates, in such form and containing such other information as the board shall from time to time prescribe, which shall be accompanied by a filing fee of twenty dollars (\$20) and the prescribed permit fee. If the applicant is a natural person, his application must show that he is a citizen of the United

**Application**

**Filing fee \$20**

**Citizen**

**Corporation**

States, and if a corporation, the application must show that the corporation was created under the laws of Pennsylvania or holds a certificate of authority to transact business in Pennsylvania. The application shall be signed and verified by oath or affirmation of the applicant, if a natural person or in the case of an association; by a member or partner thereof, or in the case of a corporation, by an executive officer thereof or any person specifically authorized by the corporation to sign the application, to which shall be attached written evidence of his authority. If the applicant is an association the application shall set forth the names and addresses of the persons constituting the association, and if a corporation, the names and addresses of all the officers thereof. All applications must be verified by affidavit of applicant and if a false statement is intentionally made in any part of the application, the signer shall be guilty of a misdemeanor and upon indictment and conviction, shall be subject to penalties provided by this article.

**Affidavit  
False  
Statement****Permit  
Issuance**

**Section 705. Issuance of Permits.**—Upon receipt of the application and proper fees and upon being satisfied of the truth of the statements in the application, and being also satisfied that the applicant's plan of business in dealing in distillery bonded warehouse certificates does not constitute a "fraudulent practice," as defined in this article, and that the applicant is a person of good repute and financially responsible, the board may issue to such applicant a permit authorizing the permittee to sell, purchase, exchange, pledge and deal in distillery bonded warehouse certificates.

**Applicant of  
good repute  
and financially  
responsible****Office**

**Section 706. Office or Place of Business to be Maintained.**—Every applicant for a distillery certificate broker permit under this article and every person to whom such a permit is issued shall maintain an office or place of business within the Commonwealth.

**Permit**

**Section 707. Permit Fee; Permits Not Assignable or Transferable; Display of Permit; Term of Permit.**—Every applicant for distillery certificate broker permit shall before receiving such permit, pay to the board an annual permit fee of one hundred dollars (\$100). Permits issued under this act may not be assigned or transferred and shall be conspicuously displayed at the place of business of the permittee. All permits shall be valid only during the year for which issued and shall automatically expire on the thirty-first day of December of each calendar year unless suspended, revoked or cancelled prior thereto.

**Fee \$100****Display****Expire  
December 31****Records**

**Section 708. Records to be Kept.**—Every person holding a permit issued under this act shall keep daily permanent records containing a complete record of all transactions in distillery bonded warehouse certificates within this Commonwealth, in such form and manner as the board may from time to time prescribe. Such records shall be available for examination by the board's officers at the broker's principal place of business or office in Pennsylvania.

**Examination**

**Section 709. Renewal of Permits.**—Upon the filing of an application and the payment of the prescribed filing fee and permit fee in the same amount as herein required on original applications for permits, the board may renew the permit for the calendar year beginning January first, provided such application for renewal is filed and fee paid on or before December fifteenth of the preceding year, unless the board shall have given previous notice of objections to the renewal of the permit, based upon violation of this article or the board's regulations promulgated thereunder, or unless the applicant has by his own act become a person of ill repute or ceases to be financially responsible.

**Renewal  
Fees**

**File before  
December 15**

**Objection  
to renewal**

**Section 710. Permit Hearings; Appeals From Refusal of the Board to Issue or Renew Permits.**—The board may of its own motion, and shall upon written request of any applicant for distillery certificate broker permit or for renewal thereof whose application for such permit or renewal has been refused, fix a time and place for hearings of such application for permit or for renewal thereof, notice of which hearing shall be sent by registered mail to the applicant at the address given in his application. Such hearing shall be before the board or a member thereof. At such hearing, the board shall present its reasons for its refusal or withholding a permit or renewal thereof. The applicant may appear in person or by counsel, cross-examine the witnesses of the board, and may present evidence which shall be subject to cross-examination by the board. Such hearings shall be stenographically recorded. The board shall thereupon grant or refuse the permit or renewal thereof. If the board shall refuse such permit or renewal following such hearing, notice in writing of such refusal shall be sent by registered mail to the applicant at the address given in his application. In all such cases, the board shall file of record at least a brief statement in the form of an opinion of the reasons for the ruling or order and furnish a copy thereof to the applicant. Any applicant who has appeared before the board at any hearing, as above provided, who is aggrieved by the refusal of the board to issue or to renew a distillery certificate broker permit, may appeal within twenty days from the date of refusal to the court of common pleas of Dauphin County.

**Hearings  
Appeals**

**Notice**

**Notice of  
refusal**

**Appeal within  
20 days**

**Appeal  
Procedure**

**Summons**

**Record to be  
certified**

**Section 711. Procedure of Appeal; Record to be Certified; Cost of Preparing Record; Appeal to Supreme Court.**—Such appeal to the court of common pleas of Dauphin County shall be upon petition of the applicant against the board officially as defendant, alleging therein in brief detail the action and decision complained of and praying for a reversal thereof. Upon service of a summons upon the board, returnable within ten days from its date, the board shall, on or before the return day, file an answer in which shall allege by way of defense the grounds for its decision. It shall also, on or before the return day of such summons, certify to the court of common pleas of Dauphin County the record of the proceedings to which the petition refers.

**Costs**

Such record shall include the testimony taken therein, the findings of fact, if any, of the board based upon such testimony, a copy of all orders made by the board in the proceedings, and a copy of the action or decision of the board which the petition calls upon the court to reverse. The cost of preparing and certifying such record shall be paid to the board by the petitioner and taxed as part of the costs in the case, to be paid as directed by the court upon the final determination of the case.

**Heard upon record**

Upon the filing of the board's answer, the case before the court of common pleas of Dauphin County shall be at issue without further pleadings, and upon application of either party the case shall be advanced and heard without delay. Mere technical irregularities in the procedure of the board shall be disregarded.

**Appeal to Supreme Court**

The case shall be heard upon the record certified to the court by the board. Additional testimony shall not be taken before the court, but the court may, in proper cases, remit the record to the board for the taking of further testimony.

From the decision of the court of common pleas of Dauphin County, an appeal may be taken by either party to the Supreme Court of Pennsylvania as in other cases.

**Revocation and Suspension****Section 712. Revocation and Suspension of Permit.**

Upon learning of any violation of this act or regulations of the board promulgated thereunder, or any violation of any laws of this Commonwealth or of the United States of America by the permittee, his officers, servants, agents or employees, or upon any other sufficient cause shown, the board may cite such permittee to appear before it or a member thereof not less than ten or more than fifteen days from the date of sending such permittee, by registered mail, a notice addressed to him at the address set forth in the application for permit, to show cause why such permit should not be suspended or revoked. When such notice is duly addressed and deposited in the post office, it shall be deemed due and sufficient notice. Hearings on such citations shall be held in the same manner as provided herein for hearing on application for permit. Upon such hearing, if satisfied that any such violation has occurred, or for other sufficient cause, the board shall immediately suspend or revoke the permit, notifying the permittee thereof by registered letter addressed to the address set forth in the application for permit. Any permittee whose permit is revoked shall be ineligible to have a permit under this act until the expiration of three years from the date such permit was revoked. In all such cases, the board shall file of record at least a brief statement in the form of an opinion of the reasons for the ruling or order. In the event the person whose permit was suspended or revoked by the board shall feel aggrieved by the action of the board, he shall have the right to appeal to the court of common pleas of Dauphin County in the same manner as herein provided for appeals from refusals to grant permits.

**Citation notice****Hearing****Suspension or Revocation notice****Ineligible for 3 years****Appeal**



## (C) Permittees' Registered Agents.

**Section 721. Unlawful to Act as Agent or to Employ Agents Without Registration.**—It shall be unlawful for a distillery certificate broker to employ any person to act as agent, or for any person to act as agent for any distillery certificate broker, in purchasing, exchanging, offering for sale, delivering, entering into agreements for the purchase, sale, exchange, soliciting subscriptions to, orders for, undertaking to dispose of, dealing in any manner in, distillery bonded warehouse certificates, without such person first having been registered as an agent as provided in this article.

**Section 722. Registered Agents.**—Every person holding a distillery certificate broker permit under this article who desires to employ an agent or agents in the operation of his business under the permit shall make application to the board for registration of such agent or agents. Every such permittee's application shall set forth the name of the permittee and the address of his main office or principal place of business in Pennsylvania, and the full address where complete records are maintained covering the permittee's operations in Pennsylvania. With each such permittee's application there shall be filed an agent's application for each agent to be registered. Permittees' applications for agents and agents' applications shall contain such information as the board shall from time to time require, and shall be signed and verified by oath or affirmation of the agent. Each application shall be accompanied by two unmounted photographs of the agent.

**Section 723. Registration Fee.**—Every application for the registration of agents filed by a permittee shall be accompanied by a registration fee in the amount of ten dollars (\$10.) for each agent to be registered, which shall cover the agent's registration from date of approval until December thirty-first of the year in which approved. Registrations may be renewed for a period of one calendar year upon the filing of a new application and payment of the same registration fee as herein provided for original registration, together with agent's new application and photographs of each agent. Applications for renewal of registration shall be filed not later than December fifteenth of each year.

**Section 724. Registration and Issuance of Identification Card.**—Upon receipt of the application, the proper fees, and upon being satisfied of the truth of the statements in the application and that the applicant is a person of good reputation and the applicant seeks a registration as defined in this act, the board may register such agent and issue to him an identification card.

**Section 725. Hearings Upon Refusal of the Board; Appeals.**—In the event that the board shall refuse to issue or to renew an agent's registration, a hearing shall be had and an appeal from the board's order may be taken to the same court and in the same manner as herein provided in the case of refusal of the board to issue or renew distillery certificate broker permits.

Agents  
Registration

Application

Records

Fee \$10

Expire  
December 31

Renewal

Filing date

Issuance

Hearings;  
Appeals



**Revocation  
and Suspension**

**Section 726. Revocation and Suspension of Agent Registrations.**—Upon learning of any violation of this act or regulation of the board promulgated thereunder, or a violation of any laws of this Commonwealth or of the United States of America by a registered agent, the board may revoke or suspend the agent's registration in the same manner as provided herein for the revocation and suspension of distillery certificate broker permits. In the event the agent whose license was suspended or revoked by the board shall be aggrieved by the action of the board, he shall have the right to appeal to the court of common pleas of Dauphin County in the same manner as herein provided for appeals in the case of suspension or revocation of distillery certificate broker permits.

**Appeal****Identification  
Card**

**Section 727. Identification Cards.**—Upon approval of the board of the application for registration of an agent there shall be issued to such registered agent an identification card containing the name and address of the distillery certificate broker, the name, address and physical description of the agent. There shall also be affixed to the identification card a photograph of the agent, and no identification card shall be valid until signed by both the distillery certificate broker and the agent and counter-signed by a representative of the board.

**Signature****Change of  
registration**

Before any agent's registration can be changed from one distillery certificate broker to another, the identification card of such agent shall either be returned to the board by the broker under whom he is registered, or such broker shall file with the board a notice in writing that he has knowledge of and consents to the employment of such agent by the other broker.

**Written  
Notice****Termination  
of employment**

When the employment of any agent is terminated, the broker shall immediately notify the board and the identification card issued to the agent shall be surrendered to the board.

**(D) Exemptions.****Bank and  
Trust Companies**

**Section 731. Bank and Trust Companies and Other Persons.**—Bank and trust companies and other persons are authorized within this Commonwealth to engage in the business of lending money to licensed distillers, rectifiers, importers and distillery certificate brokers may, without a permit required under the provisions of this act, accept distillery bonded warehouse certificates as security or collateral for any loan made in the regular conduct of their business, and such banks and trust companies and other persons may liquidate such security or collateral by sale only to licensed distillers, rectifiers, importers or distillery certificate brokers.

**Distillers,  
Rectifiers,  
Importers**

**Section 732. Distillers, Rectifiers and Importers.**—Duly licensed distillers, rectifiers and importers may, without a permit required under the provisions of this act, deal in distillery bonded warehouse certificates, but only with other duly licensed distillers, rectifiers, importers and distillery certificate brokers.

**Section 733. Certificates Owned Since July 24, 1939.—**Persons other than licensed distillers, rectifiers, importers and distillery certificate brokers, holding distillery bonded warehouse certificates on and since the twenty-fourth day of July, one thousand nine hundred thirty-nine, may dispose of same without a permit required under the provisions of this act, but only to or through a distillery certificate broker holding a permit from the board.

Owners of  
Certificates

(E) Administration and Enforcement.

**Section 741. Duties of the Board.—**It shall be the duty of the board to see that the provisions of this article are at all times properly administered and obeyed, and to take such measures and make such investigations as will detect the violations of any provisions thereof. In the event it shall discover any violation, it shall, in addition to revoking any permit or registration of an agent, take such measures as may be necessary to cause the apprehension and prosecution of all persons deemed guilty thereof.

Administra-  
tion

Investigations

Prosecution

(F) Fines and Penalties.

**Section 751. Penalties.—**Any person who shall violate any of the provisions of this article, or who shall engage in any fraud or fraudulent practice, as defined herein, shall be guilty of a misdemeanor and, upon conviction thereof, shall be sentenced to pay the costs of prosecution and a fine of not less than one thousand dollars (\$1000), nor more than five thousand dollars (\$5000); or undergo imprisonment of not less than one year, nor more than five years, or both, at the discretion of the court.

Penalties

Misdemeanor  
Fine \$1000-  
\$5000

Imprison-  
ment 1-5  
years

ARTICLE VIII.

DISPOSITION OF MONEYS COLLECTED UNDER  
PROVISIONS OF ACT.

**Section 801. Moneys Paid Into Liquor License Fund and Returned to Municipalities.—**(a) The following fees collected by the board under the provisions of this act shall be paid into the State Treasury through the Department of Revenue into a special fund to be known as the "Liquor License Fund":

Disposition  
of License  
Fees

- (1) License fees for hotel, restaurant and club liquor licenses.
- (2) License fees for retail dispensers' (malt and brewed beverages). licenses.

(b) The moneys in the Liquor License Fund shall, on the first days of February and August of each year, be paid by the board to the respective municipalities in which the respective licensed places are situated, in such amounts as rep-

To munici-  
pality in  
certain cases

resent the aggregate license fees collected from licenses in such municipalities during the preceding period.

#### Refunds

(c) The board shall have the power to appropriate money in the Liquor License Fund for the payment of claims for refunds allowed and approved by the board for moneys paid into the Liquor License Fund because of the over-payment or overcharge on license fees. In the event that the moneys in the Liquor License Fund have been distributed to the respective municipalities, the board shall have the authority to deduct from the next semi-annual payment to the respective municipalities the amount of any over-payment previously refunded by the board to any person on account of an overcharge or over-payment on a license fee.

#### State Stores Fund

**Section 802.** (As amended by Act 702 of September 21, 1961, P. L. 1728) **Moneys Paid Into The State Stores Fund for Use of the Commonwealth.**—All moneys, except fees to be paid into the Liquor License Fund as provided by the preceding section, collected, received or recovered under the provisions of this act for license fees, permit fees, filing fees and registration fees, from forfeitures, sales of forfeited property, compromise penalties and sales of liquor and alcohol at the Pennsylvania Liquor Stores, shall be paid into the State Treasury through the Department of Revenue into a special fund to be known as "The State Stores Fund."

#### Enforcement Officers' Retirement Account

One-half of all application, filing and transfer fees shall be credited to a special account designated as the Enforcement Officers' Retirement Account. The moneys credited to this account shall be paid, annually, by the board to the State Employees' Retirement Board to be paid into the State Employees' Retirement Fund and credited to the Enforcement Officers' Benefit Account. All other moneys in such fund shall be available for the purposes for which they are appropriated by law.

#### Taxes

**Section 803. Alcohol Tax Moneys Paid Into General Fund.**—All taxes collected or received by the board on sale of taxable alcohol under the provisions of this act shall be paid into the State Treasury through the Department of Revenue into the General Fund.

### ARTICLE IX.

#### REPEALS.

#### Repeal

**Section 901. Acts and Parts of Acts Repealed.**—The following acts and parts of acts and all amendments thereto are hereby repealed to the extent hereinafter specified:

Act	Reference	Sections
1705, An act to restrain people from labor on the first day of the week.	1 Sm. L. 25	5
1705, An act for selling beer and ale by wine-measure.	1 Sm. L. 43	

<i>Act</i>	<i>Reference</i>	<i>Sections</i>
May 31, 1718	1 Sm. L. 104	
August 26, 1721	1 Sm. L. 126	
March 30, 1811	P. L. 145	20
March 14, 1814	P. L. 100	
March 8, 1815	P. L. 91	
March 13, 1815	P. L. 171	
March 27, 1821	P. L. 133	
April 2, 1821	P. L. 244	All in so far as it relates to wine or distilled liquors.
April 2, 1822	P. L. 226	
April 2, 1822	P. L. 286	1, 2, 3, 4
January 16, 1823	P. L. 10	
April 12, 1825	P. L. 247	1
April 7, 1830	P. L. 352	
February 15, 1832	P. L. 73	
March 11, 1834	P. L. 117	1-5 incl.; and 10-27 incl.
April 15, 1835	P. L. 384	123-140 incl.
June 13, 1836	P. L. 589	66
May 27, 1840	P. L. 548	22
March 29, 1841	P. L. 121	
March 25, 1842	P. L. 192	44
April 21, 1846	P. L. 431	4
April 10, 1849	P. L. 570	20, 21, 22, 23, 31, 32, 33
April 16, 1849	P. L. 657	
April 30, 1850	P. L. 634	5, 6, 8
April 14, 1851	P. L. 569	8
May 8, 1854	P. L. 663	1, 2, 3, 6, 7, 8
January 26, 1855	P. L. 53	
March 31, 1856	P. L. 200	1-25 incl. and 30, 32, 33, 34
April 20, 1858	P. L. 365	1-21 incl. and 23, 24
April 21, 1858	P. L. 393	
March 17, 1859	P. L. 167	2
April 14, 1859	P. L. 653	
March 29, 1860	P. L. 346	
April 15, 1863	P. L. 480	
March 22, 1867	P. L. 40	
April 29, 1867	P. L. 95	
April 8, 1873	P. L. 566	2, 4
April 12, 1875	P. L. 40	2-12 incl.
April 12, 1875	P. L. 48	1
June 2, 1881	P. L. 43	



<i>Act</i>	<i>Reference</i>	<i>Sections</i>
July 9, 1881	P. L. 162	
May 28, 1885	P. L. 27	4 in so far as it relates to premises which a hotel, taurant or club liquor license or a dispenser's license held.
May 24, 1887	P. L. 194	
June 2, 1891	P. L. 173	
June 9, 1891	P. L. 257	
June 20, 1893	P. L. 474	
May 25, 1897	P. L. 93	1
June 21, 1897	P. L. 176	
July 30, 1897	P. L. 464	
May 11, 1901	P. L. 162	1
June 19, 1901	P. L. 572	
April 22, 1903	P. L. 257	
April 22, 1903	P. L. 259	1
April 23, 1903	P. L. 265	
April 27, 1903	P. L. 317	
March 29, 1907	P. L. 38	
April 27, 1907	P. L. 122	
May 29, 1907	P. L. 307	
April 22, 1909	P. L. 136	
April 2, 1913	P. L. 32	
May 14, 1913	P. L. 203	
June 12, 1913	P. L. 490	
July 22, 1913	P. L. 914	1 in so far as it exempts—any person or corporation owning or operating a distillery from the necessity of obtaining a license under the provisions of this act to operate a distillery.
July 17, 1917	P. L. 1020	
July 18, 1917	P. L. 1071	
February 26, 1919	P. L. 9	
May 8, 1919	P. L. 167	
June 26, 1919	P. L. 673	
July 21, 1919	P. L. 1069	
May 17, 1921	P. L. 869	42 in so far as it relates to liquor or malt brewed beverage.

<i>Act</i>	<i>Reference</i>	<i>Sections</i>
February 19, 1926	P. L. 16	
May 3, 1933	P. L. 252	
November 29, 1933	P. L. 13 (1933-34)	
November 29, 1933	P. L. 15 (1933-34)	
December 8, 1933	P. L. 57 (1933-34)	
December 20, 1933	P. L. 75 (1933-34)	
July 18, 1935	P. L. 1217	
July 18, 1935	P. L. 1246	
July 18, 1935	P. L. 1283	
June 16, 1937	P. L. 1762	
June 16, 1937	P. L. 1811	
June 16, 1937	P. L. 1827	
June 25, 1937	P. L. 2073	
June 26, 1939	P. L. 764	
June 24, 1939	P. L. 802	
June 24, 1939	P. L. 804	
June 24, 1939	P. L. 806	

Except in so far as the provisions of section one, as amended, shall apply to hotel licenses granted prior to the first day of September, one thousand nine hundred forty-nine, or granted on any application made and pending prior to said date, or to any renewal or transfer of such license, or to hotels under construction or for which a bona fide contract had been entered into for construction prior to said date.

July 18, 1941	P. L. 408
July 24, 1941	P. L. 480
July 24, 1941	P. L. 483
April 16, 1943	P. L. 60
May 21, 1943	P. L. 332
May 21, 1943	P. L. 374

Act	Reference	Sections
May 31, 1943	P. L. 401	
May 21, 1943	P. L. 403	
May 27, 1943	P. L. 688	
May 27, 1943	P. L. 694	
May 23, 1947	P. L. 287	
April 14, 1949	P. L. 481	
April 28, 1949	P. L. 764	
April 28, 1949	P. L. 769	
May 2, 1949	P. L. 896	
May 9, 1949	P. L. 964	

All except in so far as it shall apply to licenses, granted prior to September first, one thousand nine hundred and nine, or granted any application and pending prior said date, or to renewal or transfer of such licenses to hotels under construction or in which a bona fide contract had been entered into for construction prior said date.

May 20, 1949	P. L. 1482
May 20, 1949	P. L. 1546
May 20, 1949	P. L. 1551

**Inconsistent  
legislation  
repealed**

**Section 902. General Repeal Clause.**—All acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

## 2. QUOTA LAW\*

(Act 358 of June 24, 1939, P. L. 806)

### AN ACT

Limiting the number of licenses for the retail sale of liquor, malt or brewed beverages, or malt and brewed beverages, to be issued by the Pennsylvania Liquor Control Board; defining hotels, and prescribing the accommodations required of hotels in certain municipalities.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

**Section 1.** The word "hotel", as used in this act, shall mean any reputable place operated by a responsible person of good reputation, where the public may, for a consideration, obtain sleeping accommodations—

(a) In municipalities having a population of less than one thousand, shall have at least six permanent bedrooms for the use of guests;

(b) In municipalities having a population of one thousand and more but less than three thousand inhabitants, shall have at least ten permanent bedrooms for the use of guests;

(c) In municipalities having a population of three thousand and more but less than one hundred thousand inhabitants, shall have at least twelve permanent bedrooms for the use of guests; and

(d) In municipalities having a population of one hundred thousand and more inhabitants, shall have at least fifteen permanent bedrooms for the use of guests. All such hotels shall have a public dining room or rooms, operated by the same management, accommodating at least thirty persons at one time, and a kitchen apart from the dining room or rooms in which food is regularly prepared for the public.

The word "person" shall mean every natural person, association or corporation.

The word "municipality" shall mean any city, borough, incorporated town, or township.

**Section 2.** No licenses shall hereafter be granted by the Pennsylvania Liquor Control Board for the retail sale of malt or brewed beverages, or the retail sale of liquor and malt or brewed beverages, in excess of one of such licenses, of any class, for each one thousand inhabitants or fraction thereof, in any municipality, exclusive of licenses granted to hotels, as defined in this act, and clubs; but at least one such license

\* This Act was repealed by the Act of April 12, 1951, P. L. 90, the Liquor Code, "except insofar as the provisions of section one, as amended, shall apply to hotel licenses granted prior to the first day of September, one thousand nine hundred forty-nine, or granted on any application made and pending prior to said date, or to any renewal or transfer of such licenses, or to hotels under construction or for which a bona fide contract had been entered into for construction prior to said date."



may be granted in each municipality, except in municipalities where the electors have voted against the granting of retail licenses. Nothing contained in this section shall be construed as denying the right to the Pennsylvania Liquor Control Board to renew or to transfer existing retail licenses of any class, notwithstanding that the number of such licenses in a municipality shall exceed the limitation herebefore prescribed; but where such number exceeds the limitation prescribed by this act, no new license, except for hotels as defined in this act, shall be granted so long as said limitation is exceeded.

**Section 3.** The Pennsylvania Liquor Control Board shall have the power to increase the number of licenses in a such municipality which, in the opinion of the board, is located within a resort area.

**Section 4.** All acts and parts of acts inconsistent herewith are hereby repealed.

**Section 5.** This act shall become effective immediately upon final enactment.

### 3. REGULATIONS OF THE PENNSYLVANIA LIQUOR CONTROL BOARD

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**REGULATION 100 LICENSE DISTRICTS***(Effective June 26, 1952)*

Section 100.01. **Assignment of Counties to Districts.**—Under and pursuant to Section 402 of the Liquor Code, the Pennsylvania Liquor Control Board by this regulation divides the State into four license districts, as follows:

**COUNTIES IN DISTRICT NO. 1***Expiration Date: October 31*

Bucks	Delaware	Philadelphia
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**COUNTIES IN DISTRICT NO. 2***Expiration Date: January 31*

Adams	Dauphin	Montgomery
Bedford	Franklin	Northampton
Berks	Fulton	Northumberland
Blair	Huntingdon	Perry
Cambria	Juniata	Schuylkill
Centre	Lancaster	Snyder
Chester	Lebanon	Somerset
Clearfield	Lehigh	Union
Cumberland	Mifflin	York

**COUNTIES IN DISTRICT NO. 3***Expiration Date: April 30*

Allegheny	Butler	Indiana
Armstrong	Fayette	Lawrence
Beaver	Greene	Washington
		Westmoreland

**COUNTIES IN DISTRICT NO. 4***Expiration Date: July 31*

Bradford	Forest	Pike
Cameron	Jefferson	Potter
Carbon	Lackawanna	Sullivan
Clarion	Luzerne	Susquehanna
Clinton	Lycoming	Tioga
Columbia	McKean	Venango
Crawford	Mercer	Warren
Elk	Monroe	Wayne
Erie	Montour	Wyoming

**Section 100.02. Licenses Affected.**—Licenses subject to and affected by this Regulation are Hotel, Restaurant and Club Liquor Licenses, Eatery License, Place, Hotel and Club Retail Dispenser Licenses and Distributor and Importing Distributor of Malt or Brewed Beverage Licenses.

**Section 100.03. Dates for Filing Applications.**—

**A. Applications for Renewal**

Applications for renewal of licenses shall be filed not less than thirty days prior to the expiration date provided herein for each of the respective districts:

<i>District</i>	<i>File Prior to</i>	<i>Effective Date</i>
No. 1	September 2	November 1
No. 2	December 2	February 1
No. 3	March 2	May 1
No. 4	June 2	August 1

**B. Applications for New Licenses**

Applications for new licenses subject to and affected by this Regulation shall be considered by the board only twice each license year and all such applications shall be filed with the board thirty days before they are to become effective.

All new licenses shall become effective either at the beginning of each license year in the respective districts, or six months later, depending upon the date the application is filed. The following schedule of the dates when new applications shall be filed, together with the date when the license shall become effective:

<i>District</i>	<i>File Prior to</i>	<i>Effective Date</i>
No. 1	October 2 April 1	November 1 May 1
No. 2	January 2 July 2	February 1 August 1
No. 3	April 1 October 2	May 1 November 1
No. 4	July 2 January 2	August 1 February 1

**NOTE:** The time for filing applications for exchange of Distributor License and Importing Distributor Licenses is found in Section 115.14 of the Board's Regulations.

**Section 100.04. Fees.**—Applications for new and renewal licenses subject to and affected by this Regulation must be accompanied, at the time of filing, by separate remittances covering the required filing fee, license fee, and amusement permit fee or vehicle identification card(s) fee.



## REGULATION 101. MEASUREMENT OF DISTANCES FROM PREMISES

(Effective March 3, 1960)

**Section 101.01. Statutory Provision.**—Section 404 of the Liquor Code pertaining to the issuance of Hotel, Restaurant and Club Liquor Licenses, provides, inter alia, as follows:

“... Provided, however, That in the case of any new license or the transfer of any license to a new location the board may, in its discretion, grant or refuse such new license or transfer if such place proposed to be licensed is within three hundred feet of any church, hospital, charitable institution, school, or public playground, or if such new license or transfer is applied for a place which is within two hundred feet of any other premises licensed by the board, or if such new license or transfer is applied for a place where the principal business is the sale of liquid fuels and oil. And provided further that the board shall refuse any application for a new license or the transfer of any license to a new location if, in the board's opinion, such new license or transfer would be detrimental to the welfare, health, peace and morals of the inhabitants of the neighborhood within a radius of five hundred feet of the place proposed to be licensed.”

Section 432 (d) of the Liquor Code pertaining to the issuance of Retail Dispensers' Licenses provides, inter alia, as follows:

“The board shall, in its discretion, grant or refuse any new license or the transfer of any license to a new location if such place proposed to be licensed is within three hundred feet of any church, hospital, charitable institution, school, or public playground, or if such new license or transfer is applied for a place where the principal business conducted is the sale of liquid fuels and oil.”

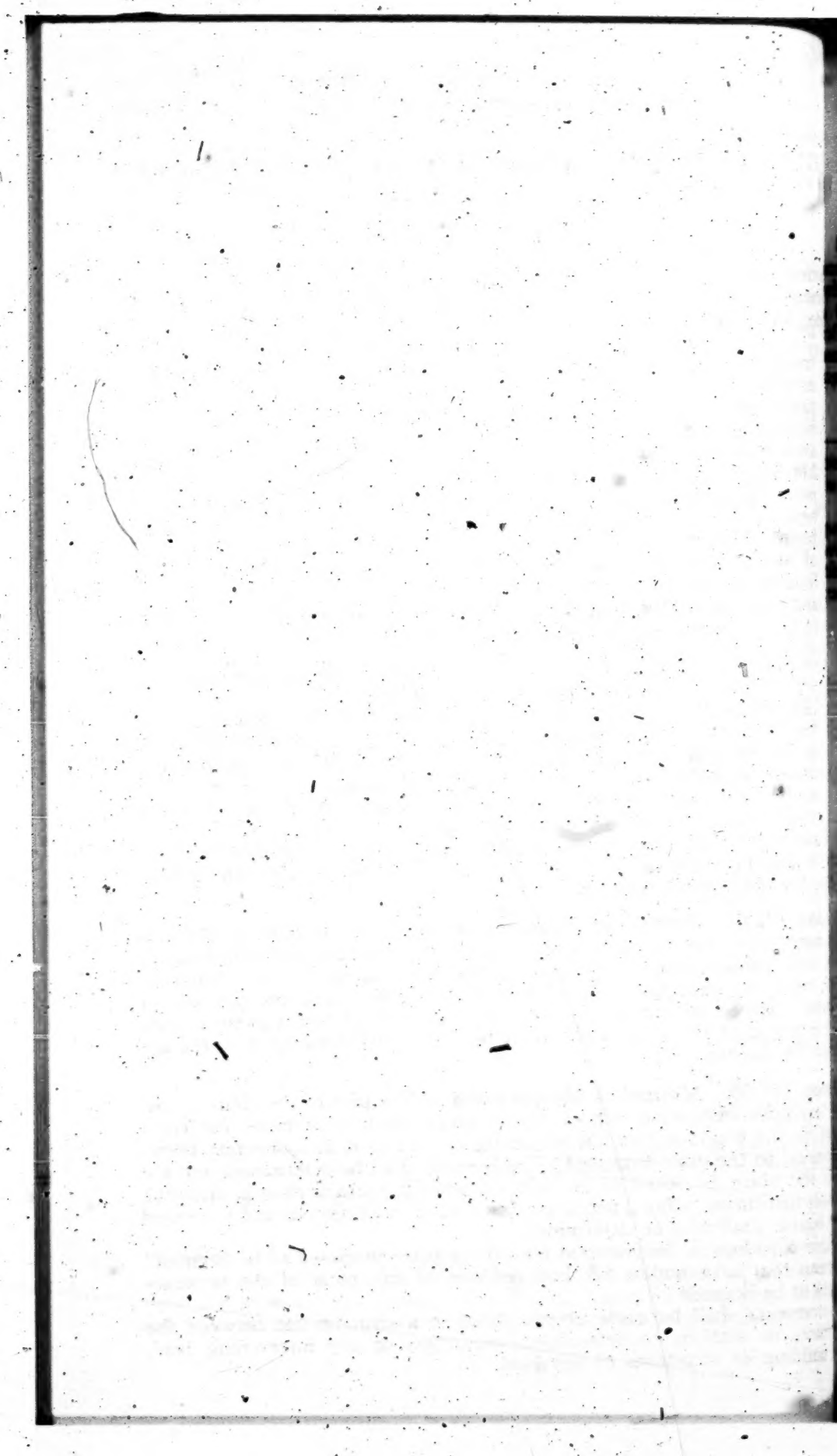
The aforesaid provisions do not establish any method to be used in measuring the distances therein set forth. Therefore, the board adopts the following rule for such measurements.

**Section 101.02. Points for Measurement.**—For the purpose of establishing a fixed point for measurement, “church, hospital, charitable institution, school, and public playground” shall be the building and/or the adjoining land used in connection therewith and “any other premises licensed by the board” shall be the portion of such premises covered by the current license. “Place proposed to be licensed” shall be the rooms designated in the application for license.

**Section 101.03. Method of Measurement.**—The part of the church, hospital, charitable institution, school, public playground or premises currently licensed by the board and/or the adjoining ground used in connection therewith nearest to the place proposed to be licensed shall be determined, and the point of the place proposed to be licensed nearest to said church, hospital, charitable institution, school, public playground, or premises currently licensed by the board, shall also be determined.

“Within a radius of five hundred feet of the place proposed to be licensed” shall mean that area within five hundred feet of any point of the premises proposed to be licensed.

Measurements shall be made or calculated in a straight line between the points or stations so determined, regardless of any intervening land, building or structures of any kind.



## **REGULATION 102 HEARINGS**

*(Effective June 28, 1952)*

**Section 102.01. Hearings on Applications.**—In all cases where the board has refused an application for a license, renewal or transfer thereof, without hearing, it will, as provided in Section 464 of the Liquor Code, fix the time and place for hearing on such applications, upon the written request of the applicant, provided such request for hearing is filed with the board no later than twenty (20) days after notice of the board's refusal of the application is mailed to the applicant at the address given in the application.

**Section 102.02. Continuance of Hearings—Applications and Citations.** Except as hereinafter provided, no continuance of any board hearing will be granted unless a request for such continuance is received by the board in Harrisburg at least forty-eight hours prior to the time fixed for hearing. Requests for continuance received by the board within the forty-eight hour period will not be granted unless satisfactory arrangement, in writing, is made with the board for the payment of all expenses resulting from such continuance. However, the board may waive the payment of such expenses in cases of extenuating circumstances.



## **REGULATION 103 CONNECTION OF RETAIL LICENSED ESTABLISHMENT WITH RESIDENCE OR OTHER BUSINESS**

*(Effective June 26, 1952)*

**Section 103.01. Issuance of Restaurant Liquor License.**—No licensed establishment may have an inside passage or communication to or with any residence other than the licensee's residence.

No licensed establishment may have an inside passage or communication to or with any other business conducted by the licensee or other persons except as approved by the board.

**Section 103.02. Issuance of Retail Dispenser Eating Place License.**—No licensed establishment may have an inside passage or communication to or with any residence other than the licensee's residence.

No licensed establishment may have an inside passage or communication to or with any business conducted by other persons.

The board will not issue a license to a person for an eating place (as defined in the Liquor Code) operated in conjunction with other business, unless such eating place has a total area of not less than three hundred square feet in one or more rooms other than living quarters, in addition to the floor space used by such person in the operation of the other business conducted in conjunction with the eating place.

**Section 103.03. Sales by Eating Place Licensees Restricted.**—No malt or brewed beverages shall be stored or sold for consumption on or off the premises in any room or rooms used for the sale of merchandise in the other business operated in conjunction with a licensed eating place. All storage and sales of malt or brewed beverages shall be confined strictly to the premises covered by the eating place license.

**Section 103.04. Division Line Between Eating Place and Other Business to be Clearly Indicated.**—In all cases where a Retail Dispenser Eating Place License has been issued and the licensed establishment is conducted in conjunction with another business, the dividing line between the area or floor space used in the operation of the other business conducted in conjunction therewith, shall be clearly indicated by a permanent partition at least four feet in height.





**REGULATION 104 APPLICANTS FOR LICENSES WHO  
OPERATED UNDER A COUNTY MALT LIQUOR  
DISTRIBUTOR LICENSE SUBSEQUENT TO  
JULY 18, 1935**

*(Effective June 26, 1952)*

**Section 104.01. Statutory Provisions.**—The Pennsylvania Liquor Control Board, under the provisions of the Beverage License Law of July 18, 1935, was empowered to issue Distributor and Importing Distributor licenses, and it was unlawful to engage in the business of distributing malt or brewed beverages without a license from the board.

The fees fixed by the Act for such licenses were to be adjusted as therein provided.

Many persons licensed as distributors by the respective county treasurers failed, upon the approval of that Act, to obtain the new licenses therein required.

**Section 104.02. Payment of Delinquent Filing and License Fees.**—Such persons hereafter applying to the board for any type of license or permit shall first file an application on a form to be furnished by the board for permission to pay, and shall pay to the board, the filing and license fees required by that Act to be paid by those engaged in the sale of malt or brewed beverages either as a distributor or an importing distributor, and in accordance with the provisions of that Act.

The holder of a county treasurer distributor license who continued to operate under such license subsequent to the expiration date for licenses fixed by the board for the licensing district in which the licensed place of business is located, shall, if such expiration date was prior to May 31, 1936, which was the expiration date of county distributor licenses, pay for the intervening period between such expiration date and May 31, 1936, a license fee at the rate of \$33.33 per month or fraction thereof, if engaged in business as a distributor; and at the rate of \$75.00 per month or fraction thereof, if engaged as an importing distributor. These fees shall be in addition to the fees hereinbefore enumerated.



# REGULATION 105 WHOLESALE LIQUOR PURCHASE PERMIT CARDS

(Effective June 26, 1952; as amended July 31, 1963)

**Section 105.01. Definitions.**—The following words shall have the meanings ascribed to them in this section:

- A. "Board" shall mean the Pennsylvania Liquor Control Board of this Commonwealth.
- B. "Retail Liquor Licensee" shall mean any person, partnership, association, or corporation holding a hotel, restaurant, club, or public service liquor license issued by this board.
- C. "Permit Holder" shall mean any retail liquor licensee, registered pharmacist, hospital, State-owned institution, manufacturing pharmacist or chemist, manufacturer of products for nonbeverage purposes, or other person to whom a Wholesale Liquor Purchase Permit has been issued by the board.
- D. "Authorized Agent" shall mean an individual whose signature appears on the reverse side of a Wholesale Liquor Purchase Permit Card, provided such individual is regularly employed in the business or establishment of a Permit Holder.

Other words and phrases used in this regulation shall have the meanings ascribed to them in the Liquor Code, and if not defined therein shall have their usual and customary meanings.

**Section 105.02. (As amended July 31, 1963) Issuance of Wholesale Liquor Purchase Permit Card.**—As evidence of the privilege given by the Liquor Code to retail liquor licensees to purchase liquor from State Liquor Stores at wholesale, the board will issue to such licensees a Wholesale Liquor Purchase Permit Card, which shall allow the purchase, at wholesale, of liquors, provided the retail cost of the order is not less than \$15.00.

Special forms of Wholesale Liquor Purchase Permit Cards issued, in accordance with board regulations, to pharmacists registered under the laws of this Commonwealth, to hospitals, State-owned institutions, and to certain manufacturers of nonbeverage products, shall allow the purchase, at wholesale, of liquors listed thereon.

**Section 105.03. Signature of Permit Holder.**—The signature of the Permit Holder must appear on the Wholesale Liquor Purchase Permit Card, in ink, in the space provided for "Licensee." Such signature shall conform to the following provisions:

- A. If the Permit Holder is a corporation or association the signature shall be that of the President, Vice-President, Secretary, or Treasurer, and his title.  
When a change of officers is made by a corporation or association the signature of the Permit Holder may be changed on the Wholesale Purchase Permit Card provided the proper Notice of Change of Officers has been filed with the board in accordance with Regulation 114.
- B. If the Permit Holder is a partnership, the signature shall be that of one or more partners.



C. If the Permit Holder is an individual, such individual's signature shall be given.

**Section 105.04. Authorized Agents.**—A Permit Holder may authorize not exceeding two agents to make purchases for him at State Liquor Store for use in his business or establishment. Only individuals regularly employed in the business or establishment of a Permit Holder may be designated as agents. The signature of such agents shall appear on the Wholesale Liquor Purchase Permit Card, in ink, in the space provided for "Authorized Agents."

A Permit Holder may appoint an authorized agent in place of either of the two whose signatures originally appeared on the Wholesale Liquor Purchase Permit Card by crossing out the name of the deposed agent, in ink, and having the third party properly sign the card. No additional agent may be appointed in this manner, and at no time is a Permit Holder allowed more than two agents.

**Section 105.05. Further Changes in Authorized Agents.**—If a Permit Holder desires to make more than one change in his Authorized Agents personnel, he shall obtain a duplicate Wholesale Liquor Purchase Permit Card by depositing his old card at a State Liquor Store and obtaining therefrom an "Application for Duplicate License or Permit," PLCB-5, the application section of which shall be completed by the Permit Holder and returned, with a fee of one dollar, to the store. The employee of the State Liquor Store who receives the application, will complete the receipt section thereof and deliver same to the Permit Holder. The manager of the State Liquor Store shall forward such application to the Bureau of Licensing of the board at Harrisburg, and a new card will be forwarded to the store. During the time required for this transaction, purchases at wholesale may be made by the Permit Holder or his authorized agent, at the store where the old card is on deposit. Upon receipt of the new card, the store manager shall immediately notify the Permit Holder. The old card shall then become void and be forwarded to the Bureau of Licensing by the store manager. The manager shall deliver the new Wholesale Liquor Purchase Permit Card to the Permit Holder when he visits the store and request delivery of same. The new card shall not be valid until properly signed in accordance with this regulation.

**Section 105.06. Replacement of Wholesale Liquor Purchase Permit Cards.**—Wholesale Liquor Purchase Permit Cards should be guarded from loss or destruction, and from unauthorized or illegal use.

If, however, a Permit Holder should mutilate his card, he may obtain a new card by proceeding in the same manner as when he desires to change his authorized agent as hereinbefore provided.

If a Permit Holder should lose his card, he shall obtain an application form for a duplicate card from a State Liquor Store. This form, when filled out, shall be returned to the store with a fee of one dollar and a letter explaining the loss of the original card. The store manager shall forward such application, fee, and letter in the same manner as hereinbefore provided. A duplicate card will then be issued as provided. During the time required for this transaction no purchases at wholesale may be made by the Permit Holder.

**Section 105.07. Use of Wholesale Liquor Purchase Permit Card.**—This card, when presented by the Permit Holder or his authorized agent at a State Liquor Store, will permit the purchase of liquors at the wholesale prices established by the board.



The board may suspend or revoke the license and/or permit of any Permit Holder who allows his Wholesale Liquor Purchase Permit Card to be used for the purchase of liquors for any use other than in the lawful conduct of his business or establishment. The board may also require any Permit Holder to refund to the board any discount granted in the purchase of liquors, if such liquors are used in violation of any laws of this Commonwealth or of any of the regulations of the board.

The Permit Holder, or his authorized agent, must present the Wholesale Liquor Purchase Permit Card each time a purchase is made at wholesale.

**Section 105.08. Deposit of Wholesale Liquor Purchase Permit Cards.**

—Whenever the board deems such action necessary, it may require all retail liquor licensees to deposit their Wholesale Liquor Purchase Permit Cards with one Pennsylvania Liquor Store of their own selection, unless otherwise designated by the board.

The said Wholesale Liquor Purchase Permit Cards shall remain on file in such store until the board grants permission for the transfer of the Permit Card to another store, or until the board decides that all Wholesale Liquor Purchase Permit Cards shall be released to the respective licensees.

All requests by licensees for transfer of Wholesale Liquor Permit Cards shall be directed to the Manager of the State Liquor Store where the card is on file, stating the reasons for the transfer and shall be subject to board approval.

**Section 105.09. Temporary Release of Wholesale Liquor Purchase Permit Cards.**—The Director of State Stores, the Division Superintendent, and/or the District Supervisor may permit the temporary release of the Wholesale Liquor Purchase Permit Card for purchase at another store or stores of merchandise not available or restricted in quantity at the store where his card is on file. The Wholesale Liquor Purchase Permit Card must be returned promptly to the original store.



# REGULATION 106 TRANSPORTATION OF ALCOHOL, LIQUOR AND MALT OR BREWED BEVERAGES: LICENSES AND VEHICLE IDENTIFICATION REQUIRED

(Effective June 26, 1952; as amended March 1, 1954, April 1, 1962,  
June 6, 1962, November 4, 1963, and August 29, 1966)

Section 106.01. Definitions.—The following words, unless the context clearly indicates otherwise, shall have the meanings hereinafter ascribed to them:

- A. "Vehicles" shall mean all trucks, buses, cars, wagons, scooters, motorcycles, aircraft, water craft, or any other means of transportation.
- B. "Transporter-for-Hire license, Class A" shall mean a license authorizing its holder to engage in commercial transportation of alcohol, liquor or malt or brewed beverages to or from points located in the Commonwealth of Pennsylvania.
- C. "Transporter-for-Hire license, Class B" shall mean a license authorizing its holder to engage in commercial transportation of malt or brewed beverages only, to or from points located in the Commonwealth of Pennsylvania.

Section 106.02. Transportation for Hire.—Except as exempted herein, any person who transports for hire within this Commonwealth alcohol, liquor or malt or brewed beverages must obtain either a Transporter-for-Hire License, Class "A," or a Transporter-for-Hire License, Class "B," from the Pennsylvania Liquor Control Board:

Alcohol, liquor or malt or brewed beverages may be transported for hire without a Transporter-for-Hire License under the following conditions:

- A. When such alcohol is denatured as specified by the Liquor Code.
- B. When such transportation is accomplished by scheduled common carriers by air of mail and passengers, or by common carriers by railroad subject to regulation by the Public Utility Commission of the Commonwealth of Pennsylvania; or transporters-for-hire who transport alcohol, liquor or malt or brewed beverages under contract with and as agents of common carriers by railroad, under railroad tariffs, railroad bills of lading, railroad regulations, and railroad responsibility and direction, provided the main transportation of such alcohol, liquor or malt or brewed beverages is by rail and such agents perform only a collection and delivery service as part of the rail transportation, and provided further that certified copies of such agents' contracts with common carriers by railroad are filed with the board.
- C. When such alcohol, liquor or malt or brewed beverages are for the personal use of the transporter and are not to be resold.
- D. By licensees of this board whose licenses or permits authorize the transportation of alcohol, liquor or malt or brewed beverages in the regular operation of their licensed business; provided, however, that such licensees have secured Vehicle Identification Cards in accordance with this regulation.
- E. By persons who transport alcohol, liquor or malt or brewed beverages commercially under I. C. C. authority, through Pennsylvania and not

for delivery therein, provided the operator of the vehicle or conveyance has in his possession at all times, while in this Commonwealth, an invoice, bill of lading, or waybill showing the brand name, size and number of containers of alcohol, liquor or malt or brewed beverages transported, which shall be produced for inspection upon request of any duly authorized police or enforcement officer of this Commonwealth, and provided also that the cargo remains intact and upon the same vehicle or conveyance while in this Commonwealth unless prevented by accident or other uncontrollable circumstances.

**Section 106.03.** *(As amended April 1, 1962 and August 29, 1966)*  
**Monthly Reports.**—All Transporters-for-Hire shall, on or before the 15th day of each and every month, file with the Pennsylvania Liquor Control Board, Harrisburg, Pennsylvania, monthly reports covering the operation of their licensed business for the preceding month. Such reports shall be on Form RCB-25, and may be a copy of the report on such form, forwarded to the Bureau of Cigarette and Beverage Taxes, Department of Revenue, Harrisburg, Pennsylvania. A copy of each report shall be retained by the licensee for a period of two years.

**Section 106.04. Identification of Vehicles.**—All persons transporting alcohol, liquor or malt or brewed beverages under the authority of a license or permit issued by this board, except as provided in Section 106.09 hereof, shall have painted or affixed on each side of the vehicle or vehicles used by them in the operation of their business, their name, address (including street name and number as shown on the license or permit), and the Pennsylvania Liquor Control Board License Number in letters no smaller than four inches in height. The Pennsylvania Liquor Control Board License Number must be preceded by the letters P.L.C.B.

**Section 106.05.** *(As amended March 1, 1954)*  
**Vehicle Identification Cards Required.**—Except as hereinafter provided, every licensee and permittee who desires to transport alcohol, liquor or malt or brewed beverages shall obtain a vehicle identification card from the board for each vehicle used. No vehicle identification card shall be required by a retail licensee, or by an authorized agent named on his Wholesale Purchase Permit Card, for the transportation of liquor purchased at a Pennsylvania Liquor Store, for use in the licensed business; nor the transportation of alcohol purchased at a State Store by an Alcohol Permittee; nor the transportation of liquor purchased at a State Store by the holders of Pharmacy Permits, Hospital Pharmacy Permits or Chemists and Manufacturing Pharmacists Permits.

**Section 106.06.** *(As amended March 1, 1954, June 6, 1962, and November 4, 1963)*  
**Applications, Fees, Conditions.**—An application for a Transporter-for-Hire License, Class "A" shall be filed with the board on form prescribed and furnished by the board and shall be accompanied by a filing fee of \$20.00, license fee of \$100.00 and an approved corporate surety bond in the amount of \$3,000.00. The license shall be issued for the calendar year and the \$100.00 license fee shall be prorated quarterly. (This is in accordance with provisions of Section 508 of the Liquor Code.)

An application for a Transporter-for-Hire License, Class "B," shall be accompanied by a filing fee of \$20.00, license fee of \$50.00 and an approved corporate surety bond in the penal sum of \$2,000.00. Such licenses shall be issued for the calendar year.



Application for vehicle identification cards shall be made on forms prescribed and furnished by the Pennsylvania Liquor Control Board and filed with the board at the time of filing the original or renewal applications for licenses or permits of the various kinds required by law, and when additional vehicles are intended to be used in connection with the respective license or permit.

A charge of \$2.00 will be made for each vehicle identification card.

Vehicle identification cards shall be issued only for commercial vehicles which are properly lettered in accordance with Section 106.04 herein, and which are either owned by the licensee or permittee, or possessed under lease or agreement which contains the following conditions:

- A. That the vehicle is in possession of and under exclusive control of the licensee.
- B. That the vehicle is operated by the licensee or by a paid employe of the licensee.
- C. That the licensee shall pay all expenses incurred in the operation of the hired vehicle, including gas, oil, repairs, etc.
- D. That the vehicle is lettered in accordance with Section 106.04 of this Regulation.

Vehicle identification cards shall be carried with all vehicles for which the respective cards have been issued.

If any vehicle identification card becomes marred, defaced, damaged, or lost, application for a new card must be made immediately. Application, accompanied by a fee of \$2.00, shall be filed with the board.

**Section 106.07. Use of Vehicles.**—No licensee, engaged in the purchase or sale of alcohol, liquor or malt or brewed beverages, shall use or permit to be used any vehicle bearing his or its vehicle identification card for the transportation of any alcohol, liquor or malt or brewed beverages, other than that used by the licensee in the operation of his or its licensed business. However, holders of Transporter-for-Hire licenses may, subject to the limitations of their respective licenses, transport for any person, legal alcohol, liquor or malt or brewed beverages, in vehicles owned or possessed by such licensees or operated by them under lease or agreement and for which vehicle identification cards have been issued as herein provided:

All vehicles must be operated by the licensee or by paid employes thereof, and no licensee shall sell, lease or permit the use by another of any vehicle for which an identification card has been issued without first defacing the lettering on the vehicle as described in Section 106.04 herein, and removing the card and returning it to the board together with notice of such sale, lease or disposition of said vehicle.

**Section 106.08. Expiration, Termination.**—All vehicle identification cards shall expire on the date indicated thereon unless the license of the licensee has been previously revoked or terminated for cause by the board, which action shall automatically terminate the validity of the vehicle identification card issued to such licensee. In the event of suspension by the board of the licensee's license, the use of identification card shall also be suspended for like period.

**Section 106.09. Temporary Use of Vehicles.**—If at any time a licensee finds it necessary to use for a period of not more than 10 days, a commercial vehicle not registered with the board, he may upon application and the pay-



ment of a fee of one dollar (\$1.00), be issued a temporary vehicle identification card or other authorization for the non-registered vehicle. Such card or other authorization will set forth a description of the vehicle and the period of time it may be used, and such card when issued, must be surrendered to the board upon expiration of the period fixed therein. While the vehicle is in operation, there must be affixed to each side a temporary sign containing the name, address, and license number of the licensee, in letters no smaller than four inches in height.

## REGULATION 107 MALT OR BREWED BEVERAGES: IMPORTATION AND DISTRIBUTION

(Effective June 26, 1952; as amended April 1, 1960, April 1, 1962,  
January 3, 1963, July 30, 1965, November 30, 1965 and August 29, 1966)

**Section 107.01. (As amended July 30, 1965) Importation Prohibited; Exceptions.**—Except as hereinafter exempted, no person shall import into Pennsylvania for delivery or use therein, any malt or brewed beverages, unless such person holds a valid Importing Distributor License issued by the board under and pursuant to the provisions of the Liquor Code, but this section shall not be construed to prohibit the importation of malt or brewed beverages by a resident of Pennsylvania, for personal use only and not for sale, provided that such malt or brewed beverages are in original containers and that the tax thereon has been paid or provisions for the payment thereof have been made pursuant to the Pennsylvania Malt Beverage Tax Law, or by railroad and pullman companies in their dining, club and buffet cars, duly licensed in Pennsylvania. However, all importations of malt or brewed beverages shall be made in accordance with the law and this regulation.

All sales of malt or brewed beverages intended to be transported into Pennsylvania for delivery or use therein, shall be consummated outside of this Commonwealth and shall be paid for in full prior to or at the time of delivery to the consignee in Pennsylvania, who shall pay all transportation charges. All such beverages shall be also tax paid in accordance with the provisions of the Pennsylvania Malt Beverage Tax Law, and the transporter thereof shall be considered the agent of the consignee.

### **Section 107.02. (As amended July 30, 1965) Restrictions.—**

- A. No licensee shall transport in the same vehicle at the same time malt or brewed beverages and coal.
- B. No licensee shall transport in the same vehicle at the same time both malt or brewed beverages and any commodity that is hawked or peddled by the licensee.

**Section 107.03. Nature of Other Business to be Considered.**—Pursuant to and in accordance with Section 492, subsection 12, of the Liquor Code, the board will in each case consider the nature of any other business engaged in by the Distributor or Importing Distributor in order to determine whether or not its approval or disapproval shall be placed thereon. However, no Distributor or Importing Distributor may engage in any business which involves hawking and peddling any merchandise.

**Section 107.04. (As amended July 30, 1965) Stock of Malt or Brewed Beverages to be Segregated.**—Every Distributor and Importing Distributor, engaged in any other business with the approval of the board, shall keep his entire stock of malt or brewed beverages completely segregated from all other merchandise handled by such Distributor or Importing Distributor.

**Section 107.05. (As amended April 1, 1962, January 3, 1963, July 30, 1965, November 30, 1965 and August 29, 1966) Records to be Maintained.**—Every Distributor and Importing Distributor shall maintain on the licensed premises, complete and truthful records in columnar form covering in full detail all transactions in malt or brewed beverages and other items.

### *A. Purchase Register*

All purchases of malt or brewed beverages shall be entered in the purchase register and this register shall show the date of the purchase, the invoice number, the source of the purchase covering both cooperage and case goods. The cost of the beer shall be shown separately from any deposits paid on case goods and the refund obtained for the return of empty containers. The net cost of all invoices shall be shown and the register shall be totaled each day with the daily unit totals carried to the purchase column in the perpetual inventory record. The daily totals shall be accumulated into a monthly total.

A suggested form which meets minimal requirements is appended here.

### *B. Sales Register*

All sales of malt or brewed beverages shall be entered in the sales register. The selling price of the beer shall be shown separately from any deposits charged on case goods and the credit allowed for the return of empty containers. The net selling price of all invoices shall be shown and the register shall be totaled each day with the daily unit totals carried to the sales column in the perpetual inventory record. The daily totals shall be accumulated into a monthly total. The sales register shall be maintained by one of the following methods:

(1) Information outlined above may be accumulated each day on a summary sheet and one posting each day made to the sales register. The summary sheet shall act as a face sheet and be permanently fastened to each group of sales invoices. Sales invoices together with their attached sheets shall be filed in order by date and be maintained for two years.

(2) Each sales invoice may be posted to the sales register showing the invoice number, value of the beer, deposits collected and refunded, the cost to the customer and the name and address of the recipient of the beer.

A suggested form which meets minimal requirements is appended here.

### *C. Perpetual Inventory Record*

A perpetual inventory record shall be maintained for inventory control purposes of all stock of malt or brewed beverages. This record shall be separate according to container size, such as full barrels, half-barrels, cases of pints, quarts, cans, splits, etc. This record shall show the number of units of each size on hand at the beginning of each business day. It shall show the total units purchased as shown on the purchase register and the total units sold as shown on the sales register for each business day. The closing inventory of each size shall also be shown and reconciled with the physical inventory of stock on hand in the warehouse. The daily totals of the purchase and sales columns shall be totaled monthly. This record is the control of the stock on hand and shall be used in compiling figures for the monthly report.

A suggested form which meets minimal requirements is appended here.

### *D. Cash Receipts and Disbursements Book*

A cash receipts and disbursements book shall be maintained showing details of all monies received and daily details of all monies expended in the operation of the licensed business.

All receipts shall be entered in detail covering income from the sale of malt or brewed beverages, soft drinks, other merchandise, and monies received from loans and other miscellaneous sources.



All expenditures shall be entered in detail covering payments for malt or brewed beverages, soft drinks, other merchandise, salaries and wages, truck expenses, rent, heat, light, taxes, insurance and license fees, advertising, sales expense, repairs and maintenance of equipment and premises, interest, personal withdrawals and miscellaneous expenses.

The cash receipts and disbursements book shall be totaled monthly and reconciled with bank account and cash on hand at the close of business each month.

Suggested forms which meet minimal requirements are appended hereto.

#### E. Sales Invoices

Except as hereinafter provided, sales invoices shall be prepared at the licensed premises for each sale prior to delivery. Such sales invoices shall be printed or affixed with the name and address of the Distributor or Importing Distributor. Sales invoices shall show the name and address of the recipient of the merchandise, date of sale, number of units, size and type of package, brand name, selling price of the malt or brewed beverages, deposits charged and refunds allowed for containers, and the net cost to the customer. The deposits charged and refunded, and the Pennsylvania sales tax where applicable shall be shown as separate entries. Sales invoices may be changed in route but only to increase or decrease the customer's original order. The sale of other commodities shall not be included on any sales invoice covering the sale of malt beverages. One copy of each sales invoice shall be given to the recipient of the merchandise. Provided, however, the name and address of private individuals will not be required on sales invoices covering cash and carry sales made at the licensee's place of business, when such individual sales are for quantities of three (3) cases or less, each case containing bottles or cans of not more than thirty-two (32) fluid ounce capacity, or for quantities of three (3) containers or less of 128, 144 or 288 fluid ounce capacity, or any combination of such containers in the quantities specified. In lieu of preparing sales invoices for such cash and carry sales, these transactions may be entered on a counter sheet maintained in columnar form showing all the information required on sales invoices other than name and address of the purchaser. This counter sheet shall be totaled daily and the totals entered into the sales register.

#### F. Monthly Report

Every licensed Distributor and Importing Distributor of malt or brewed beverages shall file with the board, each month, reports on Forms RCB-50, RCB-51 and RCB-52 covering all operations in malt or brewed beverages. Such report shall be signed by the licensee or by his duly authorized agent and shall be filed with the board on or before the 15th day of the month immediately succeeding the month for which the reports are prepared. A copy of each report shall be retained on the licensed premises for a period of at least two years.

**Section 107.06. (As amended July 30, 1965) Sales by Distributors and Importing Distributors.**—No sales of malt or brewed beverages shall be made at any time in any warehouses except those in which the licensee's principal office or place of business is maintained. Delivery thereof shall be made only from the licensed premises of such Distributor or Importing Distributor.

**Section 107.07. (As amended January 3, 1963, and July 30, 1965) Leaker Allowances.**—Malt or brewed beverages contained in cooperage that become unfit for consumption due to a head leaker, bung leaker, stave leaker, loose stich, bushing leaker or spoilage, shall be handled as follows:

A tag shall be furnished by the manufacturer to the Importing Distributor and Distributors showing information covering the type of leaker or spoiled goods, the name of the retailer or distributor and the license number of the licensee making claim. The tag shall have a perforated portion which shall be retained by the claimant, showing the reason for the return of the leaker together with the claim number and date of claim. The top portion of the tag shall be fastened to the cooperage and returned to the manufacturer through the distributor from whom originally purchased. When the manufacturer has approved the claim, he shall issue a credit memorandum in triplicate. Three copies of this credit memorandum shall be signed by the retailer. The retailer will retain the triplicate copy. The duplicate copy shall be retained by the distributor and the original credit memorandum together with the stub of the tag, shall be returned to the manufacturer for his file. Credit replacement may then be made either in kind or in value. If credit is disallowed by the manufacturer, the retailer shall be so notified through the distributor, giving the reasons therefor. The manufacturer shall attach to his monthly report on Forms RCB-47, RCB-48, RCB-49, a statement showing all disallowances, allowed, indicating names, addresses and dates involved in such allowances. Importing Distributors shall be governed by the same procedure concerning returns to out-of-state manufacturers.

**Section 107.08. (As added April 1, 1960) Distributing Rights Granted by Manufacturers and Importing Distributors of Malt or Brewed Beverages.**—All agreements, franchises, or statements of distribution rights granted by any manufacturer or by any Importing Distributor under and pursuant to the provisions of Act No. 471 of the General Assembly of Pennsylvania, approved by the Governor on October 23, 1959, and effective immediately, shall be in writing and a correct copy thereof shall be permanently maintained on the licensed premises of each party to each such agreement, franchise or statement of distribution rights. Said agreement, franchise, or statement of distribution rights shall be at all times open to inspection by any authorized representative of the Pennsylvania Liquor Control Board.

**Section 107.09. (As added January 3, 1963) Severability.**—The provisions of this regulation shall be deemed severable. Should any such section be deemed by judicial opinion or legislative enactment to be invalid, unconstitutional or in any manner contrary to the laws of this Commonwealth, such opinion or enactment shall invalidate only that particular section of this regulation and all other sections shall remain in full force and effect.



2494 RECEIPT BOOK

[illegible]

Case Disengagement Book

[illegible]

PERPETUAL INVENTORY RECORD																	
CASES OF BOTTLES AND GALS												CONTAINED			BOTTLES		
1/2 PINTS		3/4 PINTS		1 PINT		1 1/2 PINTS		2 PINTS		1 GAL.		1 1/2 GAL.		2 GAL.			
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36
37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54
55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72
73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90
91	92	93	94	95	96	97	98	99	100	101	102	103	104	105	106	107	108
109	110	111	112	113	114	115	116	117	118	119	120	121	122	123	124	125	126
127	128	129	130	131	132	133	134	135	136	137	138	139	140	141	142	143	144
145	146	147	148	149	150	151	152	153	154	155	156	157	158	159	160	161	162
163	164	165	166	167	168	169	170	171	172	173	174	175	176	177	178	179	180
181	182	183	184	185	186	187	188	189	190	191	192	193	194	195	196	197	198
199	200	201	202	203	204	205	206	207	208	209	210	211	212	213	214	215	216
217	218	219	220	221	222	223	224	225	226	227	228	229	230	231	232	233	234
235	236	237	238	239	240	241	242	243	244	245	246	247	248	249	250	251	252
253	254	255	256	257	258	259	260	261	262	263	264	265	266	267	268	269	270
271	272	273	274	275	276	277	278	279	280	281	282	283	284	285	286	287	288
289	290	291	292	293	294	295	296	297	298	299	300	301	302	303	304	305	306
307	308	309	310	311	312	313	314	315	316	317	318	319	320	321	322	323	324
325	326	327	328	329	330	331	332	333	334	335	336	337	338	339	340	341	342
343	344	345	346	347	348	349	350	351	352	353	354	355	356	357	358	359	360
361	362	363	364	365	366	367	368	369	370	371	372	373	374	375	376	377	378
379	380	381	382	383	384	385	386	387	388	389	390	391	392	393	394	395	396
397	398	399	400	401	402	403	404	405	406	407	408	409	410	411	412	413	414
415	416	417	418	419	420	421	422	423	424	425	426	427	428	429	430	431	432
433	434	435	436	437	438	439	440	441	442	443	444	445	446	447	448	449	450
451	452	453	454	455	456	457	458	459	460	461	462	463	464	465	466	467	468
469	470	471	472	473	474	475	476	477	478	479	480	481	482	483	484	485	486
487	488	489	490	491	492	493	494	495	496	497	498	499	500	501	502	503	504
505	506	507	508	509	510	511	512	513	514	515	516	517	518	519	520	521	522
523	524	525	526	527	528	529	530	531	532	533	534	535	536	537	538	539	540
541	542	543	544	545	546	547	548	549	550	551	552	553	554	555	556	557	558
559	560	561	562	563	564	565	566	567	568	569	570	571	572	573	574	575	576
577	578	579	580	581	582	583	584	585	586	587	588	589	590	591	592	593	594
595	596	597	598	599	600	601	602	603	604	605	606	607	608	609	610	611	612
613	614	615	616	617	618	619	620	621	622	623	624	625	626	627	628	629	630
631	632	633	634	635	636	637	638	639	640	641	642	643	644	645	646	647	648
649	650	651	652	653	654	655	656	657	658	659	660	661	662	663	664	665	666
667	668	669	670	671	672	673	674	675	676	677	678	679	680	681	682	683	684
685	686	687	688	689	690	691	692	693	694	695	696	697	698	699	700	701	702
703	704	705	706	707	708	709	710	711	712	713	714	715	716	717	718	719	720
721	722	723	724	725	726	727	728	729	730	731	732	733	734	735	736	737	738
739	740	741	742	743	744	745	746	747	748	749	750	751	752	753	754	755	756
757	758	759	760	761	762	763	764	765	766	767	768	769	770	771	772	773	774
775	776	777	778	779	780	781	782	783	784	785	786	787	788	789	790	791	792
793	794	795	796	797	798	799	800	801	802	803	804	805	806	807	808	809	810
811	812	813	814	815	816	817	818	819	820	821	822	823	824	825	826	827	828
829	830	831	832	833	834	835	836	837	838	839	840	841	842	843	844	845	846
847	848	849	850	851	852	853	854	855	856	857	858	859	860	861	862	863	864
865	866	867	868	869	870	871	872	873	874	875	876	877	878	879	880	881	882
883	884	885	886	887	888	889	890	891	892	893	894	895	896	897	898	899	900
901	902	903	904	905	906	907	908	909	910	911	912	913	914	915	916	917	918
919	920	921	922	923	924	925	926	927	928	929	930	931	932	933	934	935	936
937	938	939	940	941	942	943	944	945	946	947	948	949	950	951	952	953	954
955	956	957	958	959	960	961	962	963	964	965	966	967	968	969	970	971	972
973	974	975	976	977	978	979	980	981	982	983	984	985	986	987	988	989	990
991	992	993	994	995	996	997	998	999	1000	1001	1002	1003	1004	1005	1006	1007	1008
1009	1010	1011	1012	1013	1014	1015	1016	1017	1018	1019	1020	1021	1022	1023	1024	1025	1026
1027	1028	1029	1030	1031	1032	1033	1034	1035	1036	1037	1038	1039	1040	1041	1042	1043	1044
1045	1046	1047	1048	1049	1050	1051	1052	1053	1054	1055	1056	1057	1058	1059	1060	1061	1062
1063	1064	1065	1066	1067	1068	1069	1070	1071	1072	1073	1074	1075	1076	1077	1078	1079	1080
1081	1082	1083	1084	1085	1086	1087	1088	1089	1090	1091	1092	1093	1094	1095	1096	1097	1098
1099	1100	1101	1102	1103	1104	1105	1106	1107	1108	1109	1110	1111	1112	1113	1114	1115	1116
1117	1118	1119	1120	1121	1122	1123	1124	1125	1126	1127	1128	1129	1130	1131	1132	1133	1134
1135	1136	1137	1138	1139	1140	1141	1142	1143	1144	1145	1146	1147	1148	1149	1150	1151	1152
1153	1154	1155	1156	1157	1158	1159	1160	1161	1162	1163	1164	1165	1166	1167	1168	1169	1170
1171	1172	1173	1174	1175	1176	1177	1178	1179	1180	1181	1182	1183	1184	1185	1186	1187	1188
1189	1190	1191	1192	1193	1194	1195	1196	1197	1198	1199	1200	1201	1202	1203	1204	1205	1206
1207	1208	1209	1210	1211	1212	1213	1214	1215	1216	1217	1218	1219	1220	1221	1222	1223	1224
1225	1226	1227	1228	1229	1230	1231	1232	1233	1234	1235	1236	1237	1238	1239	1240	1241	1242
1243	1244	1245	1246	1247	1248	1249	1250	1251	1252	1253	1254	1255	1256	1257	1258	1259	1260
1261	1262	1263	1264	1265	1266	1267	1268	1269	1270	1271	1272	1273	1274	1275	1276	1277	1278
1279	1280	1281	1282	1283	1284	1285	1286	1287	1288	1289	1290	1291	1292	1293	1294	1295	1296
1297	1298	1299	1300	1301	1302	1303	1304	1305	1306	1307	1308	1309	1310	1311	1312	1313	1314
1315	1316	1317	1318	1319	1320	1321	1322	1323	1324	1325	1326	1327	1328	1329	1330	1331	1332
1333	1334	1335	1336	1337	1338	1339	1340	1341	1342	1343	1344	1345	1346	1347	1348	1349	1350
1351	1352	1353	1354	1355	1356	1357	1358	1359	1360	1361	1362	1363	1364	1365	1366	1367	1368
1369	1370	1371	1372	1373	1374	1375	1376	1377	1378	1379	1380	1381	1382	1383	1384	1385	1386
1387	1388	1389	1390	1391	1392	1393	1394	1395	1396	1397	1398	1399	1400	1401	1402	1403	1404
1405	1406	1407	1408	1409	1410	1411	1412	1413	1414	1415	1416	1417	1418	1419	1420	1421	1422
1423	1424	1425	1426	1427	1428	1429	1430	1431	1432	1433	1434	1435	1436	1437	1438	1439	1440
1441	1442	1443	1444														

CASES OF BOTTLES AND CANS				CONTAINERS				BARRELS				SUB-TOTAL	TOTAL	NET AMOUNT PAID
QUANTITY	PRICE	1/2 PINTS	PINTS	GALL.	1	1 1/2	2 1/2	GALL.	1	1 1/2	2 1/2			
24	34	42	51	60	69	78	87	96	105	114	123			
75	1-2	7-8	1-3	3-4	4-5	5-6	6-7	7-8	8-9	9-10	10-11			
25	25	25	25	25	25	25	25	25	25	25	25			



# **REGULATION 108 CASH DEPOSITS ON RETURNABLE ORIGINAL CONTAINERS OF MALT OR BREWED BEVERAGES**

(Effective June 26, 1952)

**Section 108.01. Deposits Required.**—Section 493 (2) of the Liquor Code, requires that in all transactions affecting malt or brewed beverages to be resold or consumed within this Commonwealth, every licensee shall pay and shall require cash deposits on all returnable original containers which contain not more than one hundred twenty-eight fluid ounces (one gallon).

In conformity with this statutory provision, therefore, the board by this regulation fixes a minimum cash deposit for the various sized containers and bottles, as follows:

**Section 108.02. Definition of Returnable Original Container.**—Under this regulation, a returnable original container, for which the aforesaid minimum cash deposits shall be obtained and paid, is:

- A. Any re-usable container of a capacity of 128 ounces (1 gallon) or less as to which title was retained by the manufacturer, licensee or vendor who bottled, sold or resold malt or brewed beverages in such container; or
- B. Any re-usable container of a capacity of 128 ounces (1 gallon) or less as to which title was not retained by the manufacturer, licensee or vendor who bottled, sold or resold malt or brewed beverages in such container but which the manufacturer, licensee or vendor, or a direct or indirect associate, agent, representative, employee, agency, distributor, affiliate or subsidiary of such manufacturer, licensee or vendor will repurchase or agree to repurchase from any vendee or person who has acquired title to such re-usable containers.

**Section 108.03. Deposits on Case Lots.**—A minimum cash deposit for wooden, cardboard or other type cases will be as follows:

- A. 24 pints or smaller size bottles, seventy-five cents (75¢) per case, calculated on the basis of two cents (2¢) per bottle and twenty-seven cents (27¢) for the case.
- B. 12 quart size bottles, seventy-five cents (75¢) per case, calculated on the basis of four cents (4¢) per bottle and twenty-seven cents (27¢) for the case.
- C. 6 half gallon size bottles, seventy-five cents (75¢) per case, calculated on the basis of eight cents (8¢) per bottle and twenty-seven cents (27¢) for the case.
- D. 36 pint or smaller size bottles, one dollar (\$1.00) per case, calculated on the basis of two cents (2¢) per bottle and twenty-eight cents (28¢) for the case.

If any other size of case is developed for use, the minimum deposit required should be ascertained from the Pennsylvania Liquor Control Board, Harrisburg, Pennsylvania.

**Section 108.04. Deposits on Less Than Case Lots.**—For individual bottles or other returnable original containers, the minimum cash deposit to be required by licensees when selling or reselling malt or brewed beverages is hereby fixed for the various sized containers, as follows:



A. Pint or smaller size bottles	\$0.02 per bottle
B. Quart size bottles	.04 per bottle
C. Half-gallon size bottles	.08 per bottle

**Section 108.05. Refund of Deposits.**—Every licensee shall refund said deposits upon return of the empty container in as good condition as when originally delivered, natural wear and tear excepted. Manufacturer, Importing Distributor and Distributor licensees shall accept empty containers only from the person to whom originally delivered and shall accept only those containers on which they collected a deposit; except, manufacturer licensees shall accept their containers, and refund the deposits thereon, from persons who originally received them from an Importing Distributor or Distributor who is no longer in business, and Importing Distributor and Distributor licensees who have taken over the business of another person shall accept containers of those brands they handle, and refund deposits thereon, although said containers were originally delivered by the former licensee.

# **REGULATION 109 EMPLOYMENT: MINORS, CRIMINALS, LICENSEES; APPOINTMENT OF MANAGERS**

*(Effective June 26, 1952; as amended April 17, 1964 and May 28, 1968)*

**Section 109.01. Statutory Provisions Relating to Minors.**—Section 493, sub-section 13, of the Liquor Code, declares it to be unlawful for any hotel, restaurant or club liquor licensee or any retail dispenser licensee to employ any minor or to permit any minor to render any service whatever in or about the licensed premises except in accordance with board regulations.

In conformity with the aforesaid provision of the law, the board by this regulation provides for the employment of minors.

**Section 109.02. (As amended April 17, 1964 and May 28, 1968) Employment of Minors by Retail Licensees.** - Minors between the ages of eighteen and twenty-one years may be employed or permitted to render service in a retail liquor licensed hotel, restaurant or club, or in a retail dispenser licensed eating place, hotel or club; PROVIDED, such minors have no contact whatsoever with the actual ordering, service, handling or care of liquor or malt or brewed beverages, and PROVIDED, further, that minors between the ages of sixteen and eighteen years may be employed in a licensed hotel or restaurant or by the owner of a retail dispenser license in conjunction with the operation of a food service business on Sundays and on Election Day provided that no liquor or malt or brewed beverages are sold, dispensed, consumed or served in the licensed establishment during the hours when any such minor between the ages of sixteen and eighteen years is so employed.

**Section 109.03. (As amended May 28, 1968) Employment of Minors by Licensees Other Than Retail.** - Minors between the ages of eighteen and twenty-one years may be employed or permitted to render service by licensees other than retail in the operation of their licensed establishments, except as salesmen or in connection with the sale or delivery of liquor or malt or brewed beverages on or off the licensed premises, or as agents under the provisions of Regulation 119, or Regulation 129.

**Section 109.03.1. (As added May 28, 1968)** As provided in the Act of May 13, 1915, P.L. 286, as amended by Act No. 49 of April 25, 1968, P.L. , known as the "Child Labor Law," any minor of the age of seventeen years who is a high school graduate or who is declared to have attained his academic potential by the chief administrator of the school district wherein he resides shall be deemed to be a minor of the age of eighteen years for the purposes set forth in Sections 109.02 and 109.03 of this regulation.

**Section 109.03.2. (As added May 28, 1968)** It shall be the duty of and the burden of proof is on the employer to have in his possession on the the licensed premises and to produce on demand a certified copy of a diploma or certificate of graduation of the seventeen year old minor, or a letter on the official stationery of the school district and over the signature of the chief administrator of the school district in which the minor resides, declaring that the said seventeen year old minor has attained his academic potential.

Section 109.03.3. (As added May 28, 1968) For the purposes Sections 109.02 and 109.03 of this regulation, it shall be the duty and the burden of proof is on the employer to have in his possession the licensed premises, and to produce on demand, a photostatic certificate of the birth certificate of any employee under the age of twenty-one years.

Section 109.04. **Employment of Criminals.**—No retail licensee shall employ in his licensed establishment any person who is prohibited by Section 493, sub-section 14 of the Liquor Code from frequenting such establishments except minors employed in accordance with Section 109.02 of this regulation.

Section 109.05. **Employment of Licensees.**—A license to manufacture, transport or sell liquor, alcohol and malt or brewed beverages, is a personal privilege which must be exercised by the individual to whom the license is issued. The operation of a licensed business is a full time responsibility requiring the constant attention of the licensee.

*A. Retail Licensees*

—No individual holding a retail license in his own name is permitted to be employed at, or engaged in any other business, except such associated business as is permitted under Section 103.02 of these regulations. If the license is issued in the name of a partnership, it is permissible for the partners, except one, to have outside employment.

*B. Distributor or Importing Distributor Licensees*

No individual holding a distributor or importing distributor license is permitted to be employed in any other work; nor, as provided in Section 493, sub-section 12, of the Liquor Code, engage in any other business, on or off the licensed premises, without board approval. If the license is issued in the name of a partnership, the board may permit the partners, except one, to have outside employment. However, the partnership must first secure written permission from the board before any of its members may be employed in any occupation or enterprise other than the licensed business.

Section 109.06. **Appointment of Managers.**—In the event of illness or an extended vacation, the Liquor Control Board may approve the appointment of a manager for a period of not more than thirty days. In case of emergency, this approval may be extended upon written request from the licensee. This manager shall be a reputable citizen of the United States, and the licensee shall immediately notify the board in writing of his desire to appoint a manager, giving the name and home address of the manager, the date and place of birth and, if naturalized, the date and place of naturalization. If there is any change of manager, the licensee shall immediately notify the board written notice of such change, together with full information for the new individual desired to be appointed. No individual may act in the capacity of manager in a licensed establishment until the licensee has received notice from the board that his appointment meets with approval. Any individual holding more than one license shall appoint a manager for each licensed establishment.

However, this section shall not be construed to prohibit the designation as manager, of a reputable employee by a licensee when such designation is not intended to relieve the licensee of his responsibility for giving his attention to the operation of the licensed establishment. The purpose and intent of this paragraph is to permit, without board approval, the licensee

to designate one of his employes as the person to be in charge of the business during short periods of time when the licensee must necessarily be absent from the licensed premises.

**Section 109.07. Licensees in the Armed Forces of the United States.**—Notwithstanding anything to the contrary in this regulation, individuals licensed to sell liquor or malt or brewed beverages in Pennsylvania, who may during an emergency in which a state of war is declared, or is imminent, enlist or be inducted into the Armed Forces of the United States of America; or who may be required by the Federal Government to enter a tour of duty with the Armed Forces and who furnish to the board documentary proof of such service, or evidence that such service is about to begin, may appoint a manager for their respective licensed establishments, subject however to the provisions of paragraph one (1), Section 109.06, hereof, as to appointment, qualifications, and change of managers.

All appointments of managers under this section shall be subject to approval by the board and, when approved, shall be effective only during the period the licensee is required by the Federal Government to be in the Armed Forces of the United States. Reenlistment in the Armed Forces, after the said emergency has ended, shall not be considered as justification for appointment of a manager.

**Section 109.08. Licensee Not Exempt from Penalties.**—Approval by the board of an appointment of manager shall not exempt the licensee from the penalties provided by law and board regulations for violations committed in the licensed establishment.

The board reserves the right to rescind the approval of an appointment of manager at any time for any cause which the board deems sufficient.







## REGULATION 110 AMUSEMENT AND ENTERTAINMENT IN LICENSED ESTABLISHMENTS

(Effective June 26, 1952; as amended May 19, 1955)

**Section 110.01. Issuance of Amusement Permits; Expiration; Transfers.**—Under the provisions of the Liquor Code, the Pennsylvania Liquor Control Board is empowered to issue to the holder of a retail liquor or retail dispenser license, except clubs, upon proper application and payment of the required fee, a special permit authorizing dancing, theatricals, floor shows, and moving picture exhibitions in the licensed premises or in any place operated in connection therewith. Such special permit shall be known as an "Amusement Permit."

Applications for Amusement Permits may be filed with the board at any time during the license year and, if issued, such Permits shall expire with the licensee's license. An original (new) Amusement Permit will not be issued to any licensee against whom revocation or criminal proceedings are pending, neither will an original (new) or renewal Amusement Permit or transfer thereof be issued at any time to a licensee who charges admission to his licensed premises.

An Amusement Permit may not be assigned, but in event the licensee's retail liquor or retail dispenser license is transferred by the board from one person to another, or from one place to another, the Amusement Permit held by such licensee may also be transferred in like manner upon the payment of a filing fee of Five Dollars (\$5.00).

### Section 110.02. (As amended May 19, 1955) Restrictions.—

- A. No licensee shall use or permit to be used on the inside or outside of the licensed premises a loud speaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof, can be heard on the outside of the licensed premises.
- B. No licensee shall maintain on the licensed premises a platform or stage, level with or elevated above the floor and used by musicians or entertainers if such platform or stage, or the entertainment produced thereon, can be seen from the outside of the licensed premises.
- C. Except as hereinafter provided, no licensee shall advertise, or permit to be advertised, by descriptive poster, picture, placard, sign, flag, or otherwise on the outside of the licensed premises, or on the outside of any building of which the licensed premises are a part, or on the inside of such licensed premises (this includes windows, doors, and the glass therein), if the advertising can be seen from the outside, anything pertaining to the entertainment conducted therein: PROVIDED, however, that a licensee may display one (1) outside wall sign or advertisement not exceeding three feet by five feet (3' x 5') in area; said sign to contain only the name or names of the entertainer or entertainers; and shall not contain descriptive matter or paintings or photographs of any nature whatsoever.
- D. No licensee shall require, request or permit any person engaged directly or indirectly as an entertainer in the licensed establishment or in any room or place connected therewith, to contact or associate with the patrons in such establishment, room or place for any purpose whatsoever. (A copy hereof shall be constantly and conspicuously displayed on the wall of the dressing room or rooms used by such entertainers.)

- E. No licensee shall require, request or permit any waitress, hostess or any other employe in the licensed establishment, or in any room, or place connected therewith, to contact or associate with the patrons in such establishment, rooms or place, for any purpose whatsoever except as is necessary in the actual service of food and beverages.
- F. No licensee shall employ, directly or indirectly, any minor person under the age of eighteen years, as an entertainer, in the licensed establishment or in any room or place connected therewith, nor shall a licensee permit in such establishment, room or place, any minor person under the age of eighteen years to act as an entertainer.
- G. In addition to the general provisions of the Liquor Code no hotel, restaurant or eating place licensee shall hold or permit to be held, any tournament or contest of any sort on the licensed premises or on premises contiguous and adjacent thereto, nor directly or indirectly, advertise, offer, award, or permit the award, on the licensed premises of any trophies, prizes, or premiums, of any sort, for any purpose whatsoever.

A licensee with or without an Amusement Permit may provide instrumental music for the entertainment of patrons.

The restrictions in this section shall apply not only to the licensee, but to all partners, officers, directors, servants, agents and employes of a licensee.

#### **Section 110.03. Suspension or Revocation of Amusement Permits.**

The board, upon sufficient cause being shown or proof being made that any licensee holding an Amusement Permit issued by the board, or any partner, officer or director, servant, agent or employe of the licensee, has permitted in the licensed premises any lewd, immoral or improper entertainment or has violated any of the laws of this Commonwealth or regulations of the board relating to Amusement Permits or to the manufacture, sale, possession or transportation of liquor, malt or brewed beverages, or alcohol, upon due notice and proper hearing being given to such licensee holding an Amusement Permit, may suspend or revoke such Permit. The action of the board in suspending or revoking an Amusement Permit shall be final.

After a Permit has been revoked, an application for a new Amusement Permit may not be filed by such licensee until the expiration of one year from the date of revocation of the Amusement Permit.

If and when any licensee holding an Amusement Permit issued by the board, or any partner, officer, director, servant, agent or employe of such licensee, is found guilty of, or pleads guilty to, a violation of the laws of this Commonwealth or regulations of the board before any court, alderman, or justice of the peace, the board will in its discretion, after hearing, suspend or revoke the Amusement Permit of such licensee upon the receipt of a transcript of the record in said proceeding.

**Section 110.04. Termination of Permits.**—In the event that the liquor or malt or brewed beverage license issued by the board shall be revoked, suspended or terminated by the board or the court for any reason, then the Amusement Permit of the licensee shall likewise be automatically revoked, suspended, or terminated.

Upon the suspension, revocation or termination of an Amusement Permit as herein provided, there shall be no refund made nor credit given for the unused portion of the fee paid for such Permit.

**Section 110.05. Hours for Amusements.**—Licensees, holding Amusement Permits from the Pennsylvania Liquor Control Board, may permit dancing, theatricals, floor shows, and moving pictures in their licensed establishments only during the hours when the sale of liquor or malt or brewed beverages is legal.

However, this regulation shall not apply to or affect licensees or licensed establishments located in municipalities that have, by ordinance, resolution or other appropriate action in accordance with law, fixed the hours for such amusements in establishments licensed by the board; and the hours so fixed by ordinance, resolution and other appropriate action in accordance with law shall control if and when certified copies of same are filed with the board.



## REGULATION 111 SANITARY AND LIGHTING CONDITIONS; CLEANING OF COILS

(Effective June 26, 1952; as amended April 29, 1959, and July 22, 1964)

**Section 111.01. Patrons Rest Rooms.**—All establishments licensed for the retail sale of liquor and/or malt or brewed beverages shall have separate and properly identified toilets for men and women. In rural communities having no sewage disposal system, outside toilets will be permitted by the board. In all other places, such facilities must be provided inside the licensed premises.

All toilets shall be easily accessible to patrons, with no entrance through the kitchen or living quarters. They shall be completely separated from any room used for the preparation, service or storage of food and shall have full length self-closing doors.

Each inside toilet shall have outside ventilation or be vented thereto by air duct (vents and ducts to have a cross section of not less than 40 square inches), and shall be equipped with at least one flush type stool or commode with seat, one wash bowl with running water, soap and sanitary towels. In the case of outside toilets, the wash bowl, soap and sanitary towels shall be provided inside the establishment.

All toilet walls, floors, ceilings, and fixtures, shall be kept in a sanitary condition at all times.

The foregoing requirements for Patrons Rest Rooms are the minimum requirements for retail licensed establishments, regardless of any greater or lesser requirements to comply with Section 111.02 following.

**Section 111.02. (As amended April 29, 1959, and July 22, 1964) Compliance With Sanitation Requirements.**—No restaurant, hotel or club catering liquor license or retail dispenser eating place or hotel malt beverage license authorized under the provisions of the Liquor Code will be issued, renewed or transferred by the Liquor Control Board for any premises unless the application for the said license, renewal or transfer has attached thereto documentary evidence showing that the proper municipal or state authorities have found that the place to be licensed, or for which an application is filed for the renewal or transfer of the license, meets all the sanitary requirements for a public eating place in that municipality wherein the place to be licensed is operated, as provided by any statute, ordinance or regulation. Such evidence in any of the following forms will be deemed acceptable documentary evidence:

1. Photostatic copy of current sanitation and/or health license and/or permit issued for the premises by the proper municipal or state health authority.
2. Sanitation certificates issued by the proper municipal or state health authority.
3. Letter signifying municipal or state health authority's approval of premises.

**Section 111.03. Lighting Conditions and Visibility in Licensed Establishment.**—All hotel, restaurant and club liquor licensees, and all retail malt beverage dispensers, shall at all times during the hours when the sale of liquor or malt or brewed beverages is permitted, maintain throughout the licensed premises sufficient illumination to insure clear visibility of the premises covered by the license and to permit patrons to read a menu or newsprint with ease. All tables and booths available for the accommodation of the public shall be so situated as to permit clear visibility of all acts occurring at such tables or in such booths.



**Section 111.04. Cleaning of Coils, Tap Rods and Connections.**—All coils, tap rods and connections, used in the operation of drawing malt or brewed beverages in licensed establishments, shall be thoroughly cleaned at least once every seven days at the sole expense of the licensee dispensing such beverages on draft. Cleaning of coils, tap rods and connections by one licensee for another licensee is prohibited.

The following methods of cleaning coils, tap rods and connections have been approved by the board:

- A. Live steam.
- B. Hot water and soda solution, followed by thorough rinsing with hot water.
- C. Any other method that thoroughly cleans the coils, tap rods and connections, and leaves them in a sanitary condition.

**Section 111.05 Certificate or Record Required.**—Coils, tap rods and connections may be cleaned for a licensee by any person who is thoroughly equipped to do so other than another licensee, by any method above enumerated. However, in all cases the cleaner shall furnish the licensee with a certificate showing the date cleaned, the name of person by whom cleaned, and the method used. Such certificate shall at all times be kept on file for inspection by officers of the board.

Coils, tap rods and connections may be cleaned by the licensee by any method above enumerated. However, the licensee shall keep a record of the date of each cleaning and the method used, which shall be available at all times for inspection by officers of the board.

**Section 111.06. Pressure Maintenance.**—If air (line pump) is used for pressure, the intake shall be from outside the building and shall be provided with an air filter or satisfactory air cleansing device. In lieu of air, the use of carbon dioxide is recommended, as this conduces to the maintenance of normal flavor in that it is much less susceptible than air to the growth of organisms and to chemical changes which may serve to impair the flavor.

**Section 111.07. Responsibility for Condition of Equipment.**—It shall be the sole responsibility of the licensee to see that equipment used in dispensing malt or brewed beverages on draft is maintained in a clean and sanitary condition. The mere fact that records of licensees indicate that coils, tap rods and connections have been cleaned shall be no defense to disciplinary action under the law and this regulation if the coils, tap rods and connections are at any time found to be in an insanitary condition.

**REGULATION 112 LUNCH**

*(Effective June 26, 1952)*

**Section 112.01. Food Items Permitted.**—Section 493, sub-section 9 of the Liquor Code, prohibits every retail liquor and every retail dispenser licensee, his servants, agents or employes, from furnishing, giving or selling below a fair cost any lunch to any consumer, except such articles of food as the board may authorize and approve.

The board hereby authorizes the furnishing by retail licensees of peanuts, pretzels, popcorn and potato chips for consumption on the premises, to consumers, under this provision.



## REGULATION 113 CLUBS: RECORDS REQUIRED; CATERING

(Effective June 26, 1952)

**Section 113.01. Provisions of the Law.**—Section 102 of the Liquor Code requires that a club licensed by the board shall hold regular meetings, conduct its business through officers regularly elected, admit members by written application, investigation and ballot, and charge and collect dues from elected members, and maintain such records as the board shall from time to time prescribe. Pursuant to and in accordance with this provision of the law, the following regulation is promulgated prescribing records to be maintained by all clubs holding either a liquor or a retail dispenser license.

**Section 113.02. Membership Record.**—A complete membership record shall be maintained, showing the date of application of the proposed member, the date of admission after election, the date initiation fees and dues are paid and the amounts. This record shall also show the name of the sponsor and any other remarks desirable. This record shall be either on a ruled form or preferably a card index, which shall carry at the top the name of the member, the address of the member and the serial number of the membership card issued. All dues shall be accumulated and posted to the proper column in the income records. A separate sheet or card shall be prepared for each member, and when members are dropped or resign, their cards shall be removed from the active file and placed in the inactive file for two years.

**Section 113.03. Income Account.**—A cash book shall be maintained and posted currently showing income in detail, separated into dues, income from malt or brewed beverages and liquor, income from food, and a miscellaneous column. This cash book shall be totaled each month and used when the bank account is reconciled by the Treasurer. The total entries under "Dues" should balance with the number of members active in the club. This record shall be maintained in columnar form.

**Section 113.04. Expenditures.**—A detail expense ledger or record must be maintained, showing in detail all expenditures separated by payments for malt or brewed beverages, liquor, food, detailed payroll, entertainment, rent, heat, light, water, equipment, and all details of all other expenditures. This record shall be in columnar form with the proper headings at the top, and balanced each month with the bank account and the Treasurer's records. Every expenditure shall be supported by delivery tickets, invoices, receipted bills, cancelled checks, petty cash vouchers or other sustaining data or memoranda.

**Section 113.05. Bank Account.**—A bank or cash account shall be maintained which shall show all income and expenditures as a control account on the income and disbursements records. This account shall be balanced each month by the Treasurer and proper record made of this in the minutes of the Recording Secretary.

**Section 113.06. Minute Book.**—A minute book shall be maintained and shall be posted currently by the Recording Secretary. This record shall contain the minutes of all regular and special meetings. It shall show the names and dates of applicants for membership and it shall also record the dates the members were admitted and if ballots were taken. The minute book shall

record the financial reports of the Treasurer and record all bills approved for payment, the reason therefor and the amounts involved. It shall record all parties, banquets, socials, etc., given to members free of charge and the costs involved. It shall show all elections and appointments of officers and committees, and the term for which they are elected, together with all customary entries in a record of this nature.

**Section 113.07. Other Documents and Instruments.**—The board requires that club licensees maintain on the licensed premises at all times the following instruments and records, subject to inspection by authorized representatives of the board:

- A. Photostatic or certified copy of the charter, if incorporated.
- B. Copy of the Constitution.
- C. Copy of the By-Laws.
- D. All invoices and receipted bills covering purchases made by officers of the club for the benefit of the club.
- E. Prescribed books of record and membership lists.

**Section 113.08. Records in English.**—All club records shall be maintained in the English language.

**Section 113.09. Constitution and By-Laws.**—Every club licensee shall adhere to all of the provisions of its Constitution and By-Laws.

**Section 113.10. Food Concession.**—If a club does not sell food it may permit a food concession to be operated by a person who is not an officer or employe of the club, and such concessionaire shall not hire any person who is an officer or employe of the club or who is a licensee or an employe of any other licensee.

The concessionaire must buy, prepare, sell and collect for all food and receive all profits from the sale thereof; pay his own employes; and neither the concessionaire, nor any of his employes are permitted to handle or dispense any liquor or malt or brewed beverages; and further provided that club employes are not permitted to serve or collect for food. Separate checks for food and liquor or malt or brewed beverages must be presented to each member being served.

Records covering all operations of the concession shall be maintained for a period of two (2) years on the licensed premises. Such records shall show the cost of food supported by invoices; receipts from sale of food supported by cash register tape or guest checks; any rental paid for the privilege and equipment used; together with the name and address, social security number and salary paid to each employe; together with all other expenditures.

**Section 113.11. Catering.**—Catering, for the purpose of this regulation shall mean the furnishing of liquor or malt or brewed beverages, or both, or any admixture thereof, to be served with food prepared on the premises or brought onto the premises already prepared, for the accommodation of groups of nonmembers who are using the facilities of the club only by prior arrangement, made at least twenty-four (24) hours in advance of the time for private meetings or functions, such as, dances, card parties, banquets, etc., and which is paid for by the nonmember or nonmembers.



A record shall be maintained showing the date and time catering arrangements were made, the name of the person or organization making the arrangements, and setting forth the approximate number of persons to be accommodated.

**Section 113.12. Entrance and Inside Doors; Inspection.**—No licensed club shall maintain or permit to be maintained in the clubhouse or club quarters entrance or inside doors barricaded in any manner.

Enforcement officers and investigators of the board shall, upon presentation of their credentials, be admitted immediately to the clubhouse or club quarters and permitted without hindrance or delay to inspect completely the entire clubhouse or club quarters at any time during which the same are open for the transaction of business.



**REGULATION 114 CHANGE OF OFFICERS OF CORPORATIONS AND CLUBS TO BE REPORTED**

*(Effective June 26, 1952)*

**Section 114.01. Method of Reporting**—Every corporation and club licensed by the Pennsylvania Liquor Control Board shall, within thirty days after any change is made in their officers or directors, report such change on form PLCB 470 which will be furnished upon request to the board.



**REGULATION 115 TRANSFER, EXTENSION, SURRENDER  
AND EXCHANGE OF LICENSES**

*(Effective June 26, 1952; Amended June 20, 1963; Amended October 30, 1968)*

**Section 115.01. Filing of Applications.** All licenses issued by the Pennsylvania Liquor Control Board pursuant to the provisions of Article IV of the Liquor Code may be transferred, as hereinafter provided. Applications for transfer of licenses may be filed at any time, but when filed within thirty days of the expiration date of the license term the transfer shall apply to the renewal license only, except in the case of death. Applications for transfer shall be made on the regular transfer form, which shall be accompanied by two copies of the application for license, proper bond, and remittance in the amount of \$30.00 or \$20.00 (as prescribed in the Statute and noted on the transfer application form).

**Section 115.02. Person to Person Transfers.** When an application has been filed for transfer of a license from one person to another at the same address, a bill of sale of the business or fixtures shall be executed by the licensee and shall be exhibited to the Board or its representatives. The purchase price of the business, either in the form of cash or legal obligation as security for the purchase price, shall be placed in escrow with an attorney or financial institution, to be paid to the original licensee upon the approval of the transfer by the Board. The actual transfer of the ownership of the business shall not pass until approval of the transfer of license has been given. The transferee shall exhibit to the Board, or its representative, a deed or a lease for the premises, or bill of sale, or both, as the case may be. Inasmuch as the license shall not change hands until the license transfer has been approved by the Board, the original licensee may continue the operation of the business and may sell liquor and/or malt or brewed beverages until formal approval of the transfer has been given. However, if the original licensee does not continue operation under the license and remain in full charge of the business, no liquor or malt or brewed beverages shall be sold and the license shall be surrendered to the Board for safekeeping until the transfer is approved.

**Section 115.03. Place to Place Transfers.** In case a retail liquor or retail dispenser licensee moves his place of business from one address to another, the new establishment shall be open for business and in operation before the license transfer will be approved. No liquor or malt or brewed beverages shall be sold or served at the new establishment until formal approval of such transfer by the Board.

In the case of other type licenses transferable under the law, if the licensee desires to move his place of business from one address to another, proper application for transfer of license shall be made, and



approval of the Board obtained, before the business is operated at the new address

**Section 115.04. Place to Place and Person to Person Transfers.** In case of a transfer involving a change of both location and ownership, the new establishment, if retail liquor or retail dispenser, shall be open for business and in full operation, except as to the sale of alcoholic beverages. The new applicant shall satisfy the Board that he is the owner or lessee of the premises, the fixtures and equipment therein. No liquor and/or malt or brewed beverages shall be sold by the applicant until the transfer of the license has been approved. The transferor, provided his fixtures and equipment are not involved in the transfer, may, if he so desires, continue to operate at his original place of business until notified that the transfer of the license to the applicant has been approved, at which time the license and Wholesale Purchase Permit Card, if any, shall be surrendered, by the transferor, to the Board.

**Section 115.05. Transfers in Case of Death.** In the event of the death of the licensee, the license may be transferred to the surviving spouse, or to the administrator or executor of the licensee's estate, immediately upon presentation of the transfer form, application, bond, transfer or filing fee, and short form certificate from the Registrar of Wills. In the event it is desired to transfer the license to a person designated by and acting for the administrator or executor, the aforementioned papers, bond and fee, together with written evidence of such designation shall be submitted by the administrator or executor. The Board shall be notified in writing within five days in case of the death of licensee.

**Section 115.06. Partnership Licenses.** In the event of voluntary retirement of one or more partners, an application for correction of license shall be executed and filed by all the partners, including the retiring partner or partners. In the case of death of a partner, the application for correction of license shall be executed and filed by all the surviving partners, and by the administrator or executor of the deceased partner, if any, and be accompanied by a short form certificate from the Registrar of Wills. In the event there is no administrator or executor of the estate of a deceased partner, the application for correction of license shall be executed and filed by the surviving partners together with documentary evidence of the death of the partner. The above requirements shall also apply where the license is held jointly by husband and wife. All such applications for correction of license shall be accompanied by an approved bond rider executed by the applicant and the surety company on the current license bond. No fees shall be required on applications for correction of license.

**Section 115.07. Return of Original License and Wholesale Purchase Permit Card.** Immediately upon the approval of a transfer of license, the transferee may be authorized by letter to sell liquor and/or malt or brewed beverages, or manufacture malt or brewed beverages, as the case

may be, for a period of fifteen days. During the interim the original license and Wholesale Purchase Permit Card, if any, shall be returned to the Board.

**Section 115.08: Extension of License to Cover Additional Premises.** No licensee of this Board may carry on any business permitted by his license on any other premises, or any portion of the same premises other than that for which the license was issued, without having first obtained approval from the Board for the inclusion of such additional premises in the license.

**Section 115.09. Application; Fee.** To obtain such approval, an application for extension of license must be filed with the Board describing the additional premises, to which shall be attached a bond rider covering such premises, properly executed by the surety or sureties who executed the bond filed with the application for the current license.

A filing fee of twenty dollars (\$20.00) shall accompany each application for extension of license, and a physical inspection of the premises shall be made whenever it is deemed necessary by the Board.

**Section 115.10. Equipment.** The additional premises, for which it is desired to extend any license, shall be completely equipped for the carrying on of the type of business permitted under the said license, but no sales of liquor or malt or brewed beverages, or storage, etc., shall take place in such additional premises until approval has been given by this Board. Such approval may be in the form of a new license, giving any additional address, or a letter authorizing the use of the additional premises. In the case of Distributors and Importing Distributors of malt or brewed beverages, no sales of malt or brewed beverages shall be made at any time in any warehouse except that in which the licensee's office or principal place of business is maintained.

**Section 115.11. Refusal.** The Board may, in its discretion, refuse to extend any license issued by it, and in all such cases the filing fee shall be retained by the Board.

**Section 115.12. Surrender of Licenses in Certain Cases.** Any licensee, whose licensed establishment for any reason whatsoever is not in operation for a period of fifteen (15) consecutive days, shall return his license (and, if a liquor license, also his Wholesale Purchase Permit Card) to the Pennsylvania Liquor Control Board not later than the expiration of the fifteen day period. The return of such license and card shall not invalidate the license, but the same shall be held for the benefit of the licensee and be available for his use when operations are resumed at the licensed premises, or for transfer.

However, when the license is returned due to the fact the licensee no longer has a lease for the licensed premises, or removes therefrom, or is dispossessed by legal process, the license shall be invalidated as to the particular premises for which issued but shall not be invalidated

generally nor cancelled, and shall be held available for the benefit of the licensee solely for transfer.

In the event that such license and card are not surrendered and returned voluntarily by the licensee as above provided, the enforcement officers of the Board shall lift such license and card, and return the same to the Board.

No license which has been surrendered to the Board nor any renewal thereof in possession of the Board shall be held for the benefit of the licensee for a period exceeding one year from the date of surrender, except when in the opinion of the Board, circumstances beyond the licensee's control prevent reactivation. Failure of the licensee to lift the license and resume operation of the licensed business, or failure to effect a transfer of the license within the said one year period shall be sufficient cause for the revocation of the license.

#### Section 115.13. Surrender of Licenses for Cancellation or Transfer.

No individual, partnership, association, or corporation, shall hold more than one retail license of the same type to cover the same establishment.

No retail licensee shall be granted a new retail license to cover the same establishment for which he already holds a retail license of a different type. In the event an application for a new retail license of a different type is approved, the license which is then in effect in the name of the applicant for that establishment must be surrendered to the Board for cancellation before the new license is actually issued.

In the event an application for transfer of an existing retail license of a different type to the premises already licensed is approved, the license which is then in effect in the name of the applicant for that establishment must be surrendered to the Board before the transferred license is actually issued in the applicant's name. In such case the license which has been surrendered to the Board or any renewal thereof in possession of the Board shall be held available for the benefit of the licensee solely for transfer for a period which shall not exceed one year from the date of surrender. In the event that a transfer of the license is not effected within the said one year period, the license shall automatically be cancelled and there shall be no refund of the license fee or any portion thereof; provided, however, that any transfer application pending at the expiration of the said one year period may be processed to conclusion.

#### Section 115.14. Exchange of Distributor and Importing Distributor Licenses.

##### A. Applications and Bonds

Applications for the exchange of Distributor or Importing Distributor Licenses shall be filed on forms furnished by the Board and shall be considered by the Board only at the times indicated in the schedule of dates as set forth in subsection "B" hereof. Each exchange application shall be accompanied by a bond executed on the standard form furnished by the Board in the penal sum required for the type of license desired.

### B. Effective Dates

All Distributor and Importing Distributor Licenses issued in exchange shall become effective, either at the beginning of each license year in the respective districts, or six months later, depending upon the date the application is filed. The following is a schedule of the dates when exchange applications shall be filed, together with the date when the license shall become effective:

District	File Prior to	Effective Date
No. 1	October 2	November 1
	April 1	May 1
No. 2	January 2	February 1
	July 2	August 1
No. 3	April 1	May 1
	October 2	November 1
No. 4	July 2	August 1
	January 2	February 1

### C. Fees

An application for the exchange of a Distributor License for an Importing Distributor License, if filed for the full license term, shall be accompanied by a license fee in the amount of \$900, filing fee of \$20 and the requisite vehicle card fee, if any.

An application for the exchange of a Distributor License for an Importing Distributor License, if filed for the last six months of a license term, shall be accompanied by a license fee in the amount of \$250, filing fee of \$20 and the requisite vehicle card fee, if any.

An application for the exchange of an Importing Distributor License for a Distributor License, if filed for the full license term, shall be accompanied by a license fee in the amount of \$400, filing fee of \$20 and the requisite vehicle card fee, if any.

An application for the exchange of an Importing Distributor License for a Distributor License, if filed for the last six months of a license term shall be accompanied by a filing fee of \$20 and the requisite vehicle card fee, if any. In the case of this type of exchange, a refund in the amount of \$250 representing one-half of the difference between the Distributor and Importing Distributor License Fees shall be granted to the licensee upon approval by the Board of the exchange and the claim for refund. This refund shall be requested by the licensee on the standard "Claim for Refund" forms furnished by the Board.





## REGULATION 116 DISPOSITION OF LIQUOR AND MALT OR BREWED BEVERAGES UNDER CERTAIN CONDITIONS

(Effective June 26, 1952)

**Section 116.01. Alcoholic Beverages Held by Estates; Under Legal Process; and by Licensees Who Have Discontinued Business.**—Liquor purchased from a Pennsylvania Liquor Store and forming part of a decedent's estate, a bankrupt's estate, or liquor so purchased and in the custody of the law under legal process, shall not be sold except to the board as provided in this regulation.

Liquor purchased from Pennsylvania Liquor Stores by a licensee of the board and in the possession of such licensee at the time he discontinues the licensed business, either by transfer of his license or otherwise, may be sold by such licensee or may be repurchased from him by the board but only pursuant to and in accordance with this regulation.

Malt or brewed beverages purchased from a licensed Distributor or Importing Distributor or Brewer, forming part of a decedent's estate, a bankrupt's estate, or in the custody of the law under legal process, may be sold only to the licensed Distributor, Importing Distributor, or Brewery from whom originally purchased.

Malt or brewed beverages in possession of a licensee at the time he discontinues his licensed business, either by transfer of his license or otherwise, may be sold by him, only to the transferee of his license or to the Distributor, Importing Distributor or Brewery from whom originally purchased.

**Section 116.02. Information to be Furnished Board.**—Persons other than the purchaser and licensees who have discontinued business and who possess liquor purchased from Pennsylvania Liquor Stores and desire to sell the same, shall file with the board a sworn statement containing the following information:

### A. Executors and Administrators

Name and address of decedent, and date of death.

Name and address of executor or administrator, who shall file with the statement a short form certificate from the Registrar of Wills.

Description of the liquor, including brand name, size and number of containers of each brand.

### B. Receivers and Trustees in Bankruptcy

Name and address of bankrupt, and date of bankruptcy.

Name and address of receiver or trustee, who shall file with the statement a certified copy of his appointment or election, and a certified copy of the order of court authorizing or directing the sale of liquor.

Description of the liquor, including brand name, size and number of containers of each brand.

### C. Officers of the Law

Name and address of debtor, and nature of debt.

Name and address of sheriff, constable or other officer of the law, who shall file with the statement written evidence of his authority to act, together with the name of court, number and term or name of magistrate.

Description of the liquor, including brand name, size and number of containers of each brand.

*D. Licensees Who Have Discontinued Business Without Transfer of License*

Name and address of licensee.

Written statement under oath that the licensee has discontinued his licensed business and the date thereof.

Description of the liquor, including brand name, size and number of containers of each brand.

*E. Licensees Who Have Sold Their Licensed Business Together With the Liquor License (See Section 116.05 following).*

**Section 116.03. Repurchase by the Board, and Price.**—Upon receipt by the board of the information required, and verification thereof by its investigator, the board will in its discretion arrange to repurchase at the price paid by the licensee or the then available price to licensees, whichever is lower, less twelve and one-half percent ( $12\frac{1}{2}\%$ ) handling charges, all such liquor purchased from Pennsylvania Liquor Stores.

**Section 116.04. Containers Unopened, with Revenue Stamps and State Seals Intact.**—Repurchases by the board will be confined solely to liquor in the original containers, unopened and with revenue stamps and State seals attached, as when sold by the State Liquor Stores.

**Section 116.05. Licensees Who Have Sold Their Licensed Business.**—If and when a licensee sells his licensed business, and transfer of the license is approved by the board, the board will in its discretion, as hereinbefore provided, repurchase the legal liquor in his possession at the time of the transfer of the license; or the licensee may if he so desires sell the said liquor to the transferee of his license; provided, however, the licensee at the time the application for transfer of his license is filed, notifies the board in writing of his intention to include such liquor or a designated quantity thereof in the sale of his licensed business; and provided further, when the transfer for a license is approved by the board, the licensee furnishes the board with a sworn statement containing a description of the liquor including brand name, size and number of containers of each brand so sold to such transferee.

**Section 116.06. Sales of Liquor Prohibited.**—Sales of other than State Store liquor, and sales of State Store liquor contrary to the provisions of this regulation, are prohibited, except sales made by licensees in accordance with the provisions of the Liquor Code.

**REGULATION 117 ALCOHOL**

*(Effective June 26, 1952; as amended March 1, 1954, and November 4, 1963)*

**Section 117.01. Definition.**—Alcohol, as defined in the Liquor Code, shall, for the purpose of this regulation, include absolute alcohol, ethyl alcohol, cane spirits, Cuban spirits, grain spirits, fruit spirits, high wines, and all other spirits by whatever name or designation given.

**Section 117.02. Retail and Wholesale Purchase and Sale of Alcohol at Pennsylvania State Stores.**—Any person legally qualified to purchase liquor at retail in the Commonwealth of Pennsylvania may purchase alcohol at retail either directly at State Stores or by special order through the State Store system.

**A. Sales At Retail**—The board will keep in stock at the State Stores for retail sales Ethyl Alcohol (190 proof).

Special Orders for Ethyl Alcohol (190 proof) will be accepted for a minimum quantity of one case of twenty-four (24) pints or one case of twelve (12) quarts; and special orders for Absolute Ethyl Alcohol (200 proof) will be accepted for a minimum quantity of one (1) gallon. At the time of placing such an order, a deposit of at least 25 per cent of the selling price must be made and the name of the manufacturer must be furnished.

**B. Sales At Wholesale**—The board may keep in stock Ethyl Alcohol (190 proof) in two (2) gallon containers, which will be priced at net wholesale, available only to holders of Wholesale Alcohol Purchase Permit Cards. There shall also be available to holders of Wholesale Alcohol Purchase Permit Cards, the containers which are carried in regular stock at net wholesale permittee prices.

Special Orders may be placed at State Stores by holders of Wholesale Alcohol Purchase Permit Cards for a minimum quantity of one (1) gallon of Absolute Ethyl Alcohol (200 proof) which is also known as Anhydrous Alcohol, and Ethyl Alcohol of 190 proof in standard case quantities. However, no special order will be accepted for any brand of alcohol sold as stock merchandise in the same size containers. At the time of placing such an order, a deposit of 25 per cent of the selling price must be made and the name of the manufacturer must be furnished.

**Section 117.03. (As amended November 4, 1963) Permits—Fees, Classification and Requirements.**—Wholesale Alcohol Purchase Permits shall be divided into three (3) classes and shall be designated as Permits AB (Beverage), AN (Non-Beverage), and AE (Tax Exempt). All three classes shall be issued by the board for the calendar year. Permits AB and AN shall be issued at a fee of \$2 each, and Permit AE shall be issued free of charge.

No fee shall be required for any Alcohol Permit issued to any state owned institution, any Department, Board or Commission of the Commonwealth, or to any political subdivision thereof, or to any agency of the United States Government.

There shall be no restrictions on the quantity of alcohol to be purchased under any class of alcohol permit.

AB Permits shall be issued only to Pennsylvania Distillery licensees. The holder of such permit may purchase alcohol at wholesale either directly or by special order through the State Store system or from Pennsylvania Distillery licensees or from legal vendors or manufacturers located outside of Pennsylvania or import alcohol manufactured by its own distilleries located outside of Pennsylvania.



AN Permits shall be issued only to physicians, dentists, veterinarians and pharmacists, duly licensed and registered under the laws of this Commonwealth, manufacturing pharmacists and chemists, manufacturers of products for non-beverage purposes, hospitals, sanitariums, eleemosynary institutions, dispensaries, governmental agencies, laboratories, universities and colleges of learning, located in Pennsylvania or for the use of their branches or subdivisions located in Pennsylvania. Permits shall be issued only for the address at which the alcohol is to be stored. Each address shall require a separate permit. The holder of such permit may purchase alcohol at wholesale either directly or by special order through the State Store system or from Pennsylvania licensed distillers designated in their application as provided in Section 117.08-B or from distillers outside this Commonwealth as provided in Section 117.08-C.

AE Permits shall be issued only to the holders of Federal Tax-Free Permits. The holder of such permit may purchase alcohol in the same manner as provided for the holder of an AN Permit.

**Section 117.04. Application for Wholesale Alcohol Purchase Permit.**—Application for a Wholesale Alcohol Purchase Permit shall be made in writing on the form provided by the board.

If a natural person, the application shall be made by and in the name of the person; if a partnership, by and in the name of the partnership, by an authorized partner; and if a corporation, by and in the name of the corporation, by its properly designated officer.

The board will, in its discretion, issue the permit applied for provided the permit fee as hereinbefore prescribed has been paid.

**Section 117.05. Wholesale Alcohol Purchase Permit Cards.**—A Wholesale Alcohol Purchase Permit Card will be issued for each approved application. This card will allow the permittee and not more than two (2) agents to purchase alcohol at wholesale from the State Stores. Each agent shall be directly employed by the permittee and, for identification purposes, shall sign the purchase permit card in the space provided.

Each time a purchase is made at the State Store, the purchase card shall be presented by the permittee, or his agent, and the quantity of each purchase shall be recorded on the reverse side of the card by the State Store Clerk.

In case any change in agents is desired, a new alcohol purchase permit card shall be obtained by making application to the board on form PLCB-56 "Application for Duplicate License or Permits." A fee of one dollar (\$1.00) shall be required with each such application and forms therefor may be obtained at any State Store.

**Section 117.06. Restrictions on Use of Alcohol by Permittees.**—Permittees purchasing alcohol in accordance with this regulation may use such alcohol only for the following purposes:

- A. Physicians, dentists, veterinarians—in their professional practice.
- B. Pharmacists—in the compounding of prescriptions and sterilizing of equipment.
- C. Manufacturing pharmacists and chemists, and other manufacturers of non-beverage products—in the manufacture and compounding of products unfit for beverage purposes.
- D. Distillery licensees—in the rectification of their products.
- E. Governmental agencies, hospitals, sanitariums, eleemosynary institutions and dispensaries—for medical, mechanical and scientific purposes and treatment of patients.

- F. *Laboratories*—for scientific research.
- G. *Universities and colleges of learning*—for scientific, mechanical purposes, and for medicinal purposes in infirmaries.

**Section 117.07. (As amended March 1, 1954) Purchase and Importation of Alcohol by AB Permittees from Other Distilleries.**—The holder of an AB Permit engaged in this state in the manufacture, rectification or blending of liquor, and the holder of an AB Permit who also manufactures alcohol under license in this state or any other state, may under an AB Permit import such alcohol into Pennsylvania and may purchase alcohol from Pennsylvania Distillery licensees who manufacture alcohol, and may purchase and import alcohol from legal vendors located outside of the Commonwealth of Pennsylvania, and in the case of affiliated companies may purchase alcohol from its affiliates or subsidiaries in the manner and for the purposes set forth below.

Every consignment of alcohol purchased or imported under the provisions of this section shall be shipped in bond and shall, upon arrival at its destination be placed in a bonded warehouse holding a Pennsylvania Bonded Warehouse License, unless the permittee maintains and operates its own bonded warehouse under its Pennsylvania Distillery License.

In the event that the alcohol so imported is stored in a bonded warehouse not maintained by the permittee, then and in that event the alcohol so stored may be delivered only to the permittee. Except as provided in Section 117.09 of this regulation, alcohol so imported or purchased by the permittee shall not be resold as such but shall be used only by the permittee in its manufacture, rectification or blending of liquor under its Pennsylvania Distillery License.

**Section 117.08. Purchase of Alcohol by AN and AE Permittees.**—

- A. AN and AE permittees may purchase alcohol requirements from the State Stores.
- B. AN and AE permittees may purchase alcohol from Pennsylvania distillery licensees who manufacture alcohol providing such distilleries have been designated in their applications. Upon approval of the application, the board will notify such distillers that deliveries of alcohol may be made direct to the permittee during the calendar year. The names of such distillers may be added to or deleted from the application at any time during the term for which the purchase permit is effective, and alcohol may be shipped direct to the purchase permittee upon notice by the board of specific approval for each addition or change.
- C. Alcohol may be purchased in bulk by AN or AE Permittees from distillers located outside this Commonwealth through the board.  
AN and AE Permittees desiring to purchase alcohol in bulk shall submit their order for such purchases to the Pennsylvania Liquor Control Board at Harrisburg, Pennsylvania, on a Bulk Purchase Order, Form PLCB-381 (in duplicate), obtainable from the Purchasing Division, Pennsylvania Liquor Control Board, Harrisburg, Pennsylvania. Bulk purchases of 190 proof alcohol by AN Permittees will be allowed only in quantities of twenty-five (25) wine gallons or more and in containers of not less than five (5) gallon capacity. AE Permittees may purchase alcohol in bulk, without restrictions as to minimum size of container or minimum quantity. Each order submitted



by an AN Permittee shall be accompanied by a remittance in the amount of two dollars (\$2.00). No service charge will be required of AE Permittees. Immediately upon receipt from a permittee of a bulk purchase order for alcohol, the board will, if approved, notify thereon its approval and send it to the distiller designated therein, notifying such distiller to make shipment to the Pennsylvania Liquor Control Board at the destination indicated in the order.

The board will furnish the distiller with board seals which shall be affixed by him to each container of the shipment to identify such container as a legal purchase in Pennsylvania. The board will furnish the permittee with a "Notice of Release," in duplicate, both copies of which shall be signed by the permittee and surrendered to the carrier upon delivery of the shipment. The carrier shall, in turn, forward one copy of this "Notice of Release" to the office of the Pennsylvania Liquor Control Board in Harrisburg, Pennsylvania.

The board shall not be liable to any distiller for the purchase price of alcohol purchased in bulk by a permittee, but will allow the payment of the purchase price by the permittee directly to the distiller upon such terms as may be agreed between them.

**Section 117.09. (As amended March 1, 1954) Prohibited Purchases and Sales.**—Except as hereinafter provided, no permittee or any other person may purchase alcohol for repackaging or resale in its original state, provided, however, that this prohibition shall not be construed to apply to sales and/or transfers of alcohol between affiliates or subsidiaries holding Pennsylvania Manufacturers' Licenses (distilleries) and alcohol permits as herein required, if and when such alcohol is used by the licensees solely for blending and rectification of liquor.

Distillers may not sell alcohol to anyone in this Commonwealth, except to alcohol permittees in accordance with this regulation or to the board.

**Section 117.10. Records to be Maintained by Alcohol Permittees.**—All alcohol permittees shall maintain on the premises where the alcohol is used, for a period of two (2) years, complete and truthful records covering the purchase, importation and use of alcohol. These records shall consist of a stock ledger maintained on a perpetual inventory basis showing all withdrawals from stock and setting forth in detail the purpose for which the alcohol is to be used.

The records of alcohol permittees, and the premises wherein alcohol is stored and used, shall be open to inspection, during regular business hours, by the board or its duly authorized representatives.

**Section 117.11. Reports to the Board.**—AB Permittees shall submit monthly reports on forms provided by the board (Forms PLCB-42, 43 and 44). Such reports shall be filed with the Pennsylvania Liquor Control Board not later than the fifteenth (15th) day of the following month.

**Section 117.12. Transfer of Permits Prohibited.**—No alcohol permit may be transferred from one person to another.

An alcohol permittee who changes his address from that shown on his alcohol purchase permit card, shall file within fifteen (15) days thereafter an application for correction of permit.

If any change in ownership of the permittee's business takes place, the alcohol permit shall automatically terminate and a new application must be filed by the successor.

**Section 117.13. Renewal of Alcohol Permits.**—Every alcohol permit issued under this regulation shall expire December 31, of the calendar year in which issued.

Such permits may be renewed by the filing of an application accompanied by the required fee, at least thirty (30) days prior to the expiration date of the current permit.

**Section 117.14. Revocation or Suspension of Alcohol Permits.**—The board may revoke or suspend any alcohol permit issued under the provisions of this regulation, if after notice and hearing it shall appear to the board that the permittee has violated any law of the United States or of this Commonwealth, or any regulation of the board, relating to liquor, malt or brewed beverages, or alcohol. The action of the board in revoking or suspending the permit shall be final.



# REGULATION 118 PURCHASE OF LIQUOR BY PHARMACISTS, HOSPITALS AND STATE INSTITUTIONS

(Effective June 26, 1952; as amended April 29, 1959, and November 4, 1963)

**Section 118.01. (As amended November 4, 1963). Applications and Permits.**—A registered pharmacist operating a drug store or pharmacy, who desires to purchase liquor from a State Liquor Store, at wholesale, and sell or dispense such liquor on prescription or use such liquor in the compounding of prescriptions, only, shall make application to the board for a Wholesale Liquor Purchase Permit (Pharmacies, Hospitals and Institutions). The application shall be made in the form provided by the board and shall be accompanied by a fee of \$2.00.

Hospitals and State-owned institutions desiring to purchase liquor from a State Liquor Store, at wholesale, and sell or dispense such liquor to patients upon prescription of a physician, or use such liquor in the compounding of prescriptions or medicines, only, shall make application to the board for a Wholesale Liquor Purchase Permit. The application shall be made on the form provided by the board, but no fee shall be required.

Upon receipt of an application in proper form, the board may issue to the applicant a Wholesale Purchase Permit as provided in Regulation 105, authorizing the purchase of liquor at wholesale in accordance with the provisions of Section 118.02 below.

All Wholesale Purchase Permits issued to Pharmacists, Hospitals and State-owned institutions shall expire December 31, of the year in which issued and may be renewed upon the filing, not later than December 1, of an application and in the case of Pharmacists, only, the prescribed fee of \$2.00.

The board may refuse to issue or renew a Wholesale Liquor Purchase Permit under this regulation if it is of the opinion, based upon evidence obtained, that the provisions of this regulation or of the laws of this Commonwealth relating to liquor, malt or brewed beverages and alcohol have not been or will not be complied with.

**Section 118.02. Sales on Prescription Only.**—The holder of a permit under this regulation may purchase at wholesale at a State Liquor Store, and sell, dispense, or use in the compounding of prescriptions and medicines only, whiskey, brandy, Holland gin, champagne, port and sherry wines (herein called and referred to as "liquor"). A pharmacist may sell or dispense on the premises of his drug store or pharmacy, only upon a written prescription of a duly licensed physician, dentist or veterinarian. Every prescription for liquor shall be signed by a duly licensed physician, dentist or veterinarian, shall be dated and shall contain the name and address of the person for whom the liquor is prescribed. No prescription for liquor shall be written, prepared or executed in or on the premises of a drug store or pharmacy. A prescription for liquor shall be filled only once and shall entitle the person named therein to not more than one quart of the particular liquor specified.

**Section 118.03. Prescriptions to be Retained.**—All prescriptions upon which liquor has been sold or dispensed, by a pharmacist, or in a hospital or State-owned institution, shall be retained for at least two (2) years on the premises of the drug store, pharmacy, hospital or State-owned institution and shall be available for inspection by any authorized representative of the board.

**Section 118.04. (Rescinded April 29, 1959)**

**Section 118.05. Inspection—Records.**—The premises of every Permittee under this regulation wherein liquor is sold or dispensed on prescription shall be subject to inspection by authorized representatives of the board at any time during normal business hours.

All Permittees under this regulation shall keep and maintain upon the premises, books and records which shall show (a) quantity of liquor which has been purchased, the location of the State Store where procured, and the date purchased; (b) the name and address of the person to whom sold or dispensed, with quantity and date of sale; and, (c) quantity of liquor used in compounding prescriptions and medicines. These records shall be available for inspection by any authorized representative of the board at any time during normal business hours.

**Section 118.06. Consumption in Pharmacy Prohibited.**—No liquor purchased under this regulation shall be consumed on the premises of any pharmacy or drug store.

**Section 118.07. Penalties.**—Failure to maintain the records herein specified, or the sale, furnishing or dispensing of liquor by any permittee contrary to the provisions of this regulation and the Liquor Code, shall be sufficient cause for the suspension or revocation of the Wholesale Liquor Purchase Permit issued under this regulation and shall be construed as a violation of the Liquor Code.



## REGULATION 119 WINES

(Effective June 26, 1952; as amended November 4, 1963)

### Section 119.01. Purchase and Importation of Sacramental Wine.—

The holder of a sacramental wine license may purchase from manufacturers within this Commonwealth, or import into the Commonwealth, only wine to be used solely for sacramental or religious purposes, and such purchases shall be consigned and delivered to the licensee.

### Section 119.02. Sale and Delivery of Sacramental Wine.—A. Sales

of sacramental wine may be made by the licensee only to a priest, clergyman or rabbi, duly ordained and in charge of a congregation, for use in the cathedral, church, synagogue or temple.

B. Sales of sacramental wine may be made by the licensee only to a priest, clergyman or rabbi, duly ordained and in charge of a congregation, for the use of sustaining members of the congregation or members of the faith who attend religious services, when religious rites of his denomination require the use of sacramental wine in the home.

The priest, clergyman or rabbi purchasing the wine shall furnish to the licensee the name and address of the member or family and the quantity of wine to be delivered; and, no sale or delivery shall be made until the names and addresses have been duly certified to the licensee.

Such sales are limited to an amount not exceeding ten (10) gallons annually to one family.

All deliveries shall be by the licensee direct to the home address as certified by the purchasing priest, clergyman or rabbi.

### Section 119.03. Sacramental Wine Containers.—

Containers for wine sold for use in the church, synagogue or temple under Section 119.02 (A), may be of glass or wood and of unlimited capacity. The wine sold by the holder of a sacramental wine license for use in the homes of members under Section 119.02 (B), shall be limited to containers not exceeding one gallon. Each container shall be capped or corked by the manufacturer or the holder of a sacramental wine license and shall have affixed thereto the official seal of the board as required by the Liquor Code.

### Section 119.04. Records of Sacramental Wine Licensees.—

The holder of a sacramental wine license shall keep in duplicate, daily records containing the date of purchase, the name and address of the person from whom purchased, the date of sale, the name and address of the priest, clergyman or rabbi to whom sold, and the kind, quantity and price of wine sold. Also, the name and address of members to whom wine is delivered direct, together with the quantity. A copy of all sales records shall be attached to the monthly report filed with the board, and a copy retained in the records of the licensee on the licensed premises for a period of two (2) years.

All stock of wine on hand shall be reconciled with the records by means of a physical inventory taken at the close of business each month, at which time proper claim shall be made for any unusual losses of wine through theft, evaporation, absorption, or other conditions. No retroactive claims for losses will be allowed.

The records maintained by licensees under this regulation shall be open to inspection by any representative of the board, during business hours.

**Section 119.05.** (*As amended November 4, 1963*) **Registration of Agents.**—It shall be unlawful for any sacramental wine licensee to employ individuals to solicit orders for sacramental wines or to promote the sale of such wines unless and until each such individual has been registered by the licensee with the board, in accordance with this regulation. Every application for registration shall be made upon forms provided by the board and shall set forth the name and address of the sacramental wine licensee together with the name and home address of the agent and any additional information required. The form shall be signed by both the sacramental wine licensee and the agent employed. Two photographs of the agent, exactly two by two inches in size, taken within two years, shall also be submitted therewith. Every application shall be accompanied by a remittance in the amount of \$10.00 for each agent to be registered, and an approved surety bond (form to be furnished by the board) in the penal sum of \$250.00. Such bond shall be conditioned for the faithful observance by the sacramental wine licensee, and the agent, of all the laws of the Commonwealth and regulations of the board, relating to liquor, alcohol and malt or brewed beverages. The board reserves the right to refuse to register any agent.

**Section 119.06. Identification Cards.**—Upon approval by the board of the licensee's application for registration of agents, there shall be issued to such authorized agents, identification cards containing the name and address of the licensee, and the name and address and physical description of the agent. There shall also be affixed to the identification card; a photograph of the agent, and no identification card shall be valid until signed by both the licensee, and the agent, and countersigned by a representative of the Pennsylvania Liquor Control Board.

**Section 119.07. Privileges of Sacramental Wine Agents.**—An agent of a sacramental wine licensee may solicit and obtain orders solely for sacramental wine and only from priests, rabbis or clergymen. No licensee or agent is permitted to contact persons other than priests, rabbis or clergymen. No agent of a sacramental wine licensee is permitted to have in his possession or on his truck any sacramental wine for which he does not have an order in his possession. No agent of the sacramental wine licensee may take orders for any alcoholic beverage except wine to be used for sacramental or religious purposes, unless such agent has been registered in accordance with the board's regulations, neither may he deliver any other type of merchandise. Every truck or vehicle used by a sacramental wine licensee or his agent, must be registered with the board in accordance with the Liquor Code and regulations of the board.

**Section 119.08. Cancellation of Registration.**—Any licensee may request the cancellation of an agent's registration by returning the identification card issued to the agent. The board shall cancel the registration so requested, and may release liability on the surety bond originally filed, provided there has been no breach of the condition of such bond. When the employment of any agent is terminated, the licensee shall immediately notify the board, and the identification card issued to the agent shall be surrendered to the board.

**Section 119.09. Revocation or Suspension of Registration.**—Upon learning of any violation of any regulation promulgated by the board, or any of the laws of this Commonwealth relating to liquor, alcohol or malt or brewed beverages, by the agent of the sacramental wine licensee, the board may cite such agent to appear before it or its examiner, not less than ten (10) days nor more than fifteen (15) days from the date of sending such agent

registered mail, a notice to show cause why the agent's registration should be suspended or revoked. Upon such hearing, if satisfied that such violation has occurred, the board shall immediately suspend or revoke the agent's registration, notifying the licensee and the agent by registered mail. When a registration is suspended or revoked, the bond filed with the application for such registration may be forfeited, and the full amount of the bond, or any part thereof may be fixed as a penalty, and collected by the board. Any agent whose registration has been revoked shall be ineligible for re-registration under this regulation for such period of time as the board in its discretion shall determine. The action of the board shall be final.

**Section 119.10. Wine to be Dispensed from Original Containers.—**No wine may be dispensed by retail liquor licensees except from the original container purchased from Pennsylvania Liquor Stores.

**Section 119.11. Destruction of Original Container by Licensees.—**The original container of wine purchased from Pennsylvania Liquor Stores by a licensee must be destroyed within twenty-four (24) hours after the contents have been removed therefrom, as required by Section 491 (5) of the Liquor Code, which provides "It shall be unlawful for any restaurant, hotel or other licensee, his servants, agents or employees, to fail to break any package in which liquors were contained within twenty-four hours after the original contents were removed therefrom." This regulation is not intended to prohibit the use of decanter style bottles as original containers, but they must be destroyed within twenty-four (24) hours after emptied.

**Section 119.12. Use of Dispensers.—**This regulation is not intended to prohibit the use of siphons or other types of dispensers so long as the contents are dispensed directly from the original container.

**Section 119.13. Wine in Kegs.—**Wine in kegs of any capacity shall not be purchased or sold by the Pennsylvania Liquor Control Board. No wine shall be sold through the board in containers exceeding one (1) gallon capacity.





**REGULATION 120 BRANDIES FOR RELIGIOUS USE**

*(Effective June 26, 1952)*

**Section 120.01. Procurement of Brandy.**—Members of a religious denomination who require for religious use specially prepared brandies not stocked in State Liquor Stores may obtain the same only during the months of March and April, in each year, on Special Order, solely from Permittees hereinafter provided:

A. Pennsylvania importers and manufacturers (including rectifiers) licensed by the board, desiring to accept orders for such brandies, shall obtain from the board, free of charge, upon application, Special Permit Cards for such purpose, for themselves only, (Registered Agents of such licensees may not solicit nor accept Special Orders for this type of merchandise). This Special Permit Card shall be exhibited at the State Store when such Special Orders are placed.

**Section 120.02. Listings.**—Applications for the establishment of selling outlets for brandies for religious use shall be submitted on Form E-161 to the Pennsylvania Liquor Control Board, Purchasing Division, Harrisburg.

**Section 120.03. Special Orders.**—Orders for not less than one pint of brandies may be accepted by Permittees, under this regulation, but all be written on forms furnished by the board.

The total of such orders received from individuals, when transmitted to a State Store shall aggregate a full case; and shall be paid for in full when received.

It will not be necessary for a Permittee, under this regulation, to ship the merchandise to a State Store, but no deliveries of individual bottle orders will be made until a purchase order has been received by the Permittee from the board.

**Section 120.04. Official Seals.**—Each bottle of brandy sold under this regulation shall have thereto affixed the official decalcomania seal of the board, provided in the Liquor Code, in such manner as prescribed by the board.

**Section 120.05. Violations.**—Any permittee hereunder who shall violate any of the provisions of this regulation shall be subject to the penalties provided in the Liquor Code.



## CHAPTER 20. BRADIES FOR RELIGIOUS USE

20.1. The purpose of this chapter is to provide a list of religious articles and to provide a list of religious articles which are to be used in the service of the church.

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## REGULATION 121 IMPORTER LICENSES

(Effective June 26, 1952)

**Section 121.01. Statutory Provisions.**—Section 410 of the Liquor Code, provides:

“(c) Importers' licenses shall permit the holders thereof to bring or import liquor from other states, foreign countries, or insular possessions of the United States, and purchase liquor from manufacturers located within this Commonwealth, to be sold outside of this Commonwealth or to Pennsylvania Liquor Stores within this Commonwealth, or when in original containers of ten gallons or greater capacity, to licensed manufacturers within this Commonwealth.

“All importations of liquor into Pennsylvania by the licensed importer shall be consigned to the Pennsylvania Liquor Control Board or the principal place of business or authorized place of storage maintained by the licensee.

“(f) Every importer shall maintain on the licensed premises such records as the board may prescribe.”

Pursuant to and in accordance with the foregoing sections of the code, and for the more efficient administration thereof, this regulation is promulgated.

**Section 121.02. Importation, Sales and Bottling.**—Except as herein after provided, all liquors imported into and/or purchased within this Commonwealth and sold by the holder of an importer's license, shall be in the original container in which it was received by such importer, which container has been capped, corked and labeled by the manufacturer. Such liquors, imported or purchased within this State, may not be reduced, repackaged, fortified, blended, rectified or compounded by the importer unless he also holds a manufacturer's license issued by this board. However, the holder of an importer's license may have liquor imported or purchased by him in Pennsylvania in bulk, bottled for him by the holder of a manufacturer's license issued by this board. Such bulk liquor shall be bottled straight or reduced in proof only, and shall not be fortified, blended, rectified or compounded.

**Section 121.03. Importations and Purchases by Distilleries Holding Importer Licenses.**—A distillery which holds a manufacturer's license, issued by this board, may not import any liquor from outside this Commonwealth or purchase liquor from a Pennsylvania manufacturer unless such distiller also holds an Importer License issued by this board. When both such licenses are held, liquor may be imported or purchased from a Pennsylvania manufacturer, in bulk, by the holder thereof to be used in the manufacture, rectification, blending and reduction in proof for straight bottling. Liquors which have been rebottled, as well as rectified, and manufactured products, may be sold to the board, exported to other States, or sold to the holder of an Importer License within this State. Such importation or purchase of liquor must be for the sole use and benefit of the holder of the manufacturer's license, and the liquor so imported or purchased may not be resold in its original state.

Pennsylvania manufacturers holding Importer Licenses may purchase liquor in bulk from other manufacturers in this Commonwealth in accordance with the following procedure:

Bulk sales will be permitted only in quantities of 50 gallons or more for each sale. Manufacturers desiring to purchase liquor in bulk must place their

orders with the Purchasing Division of the board in Harrisburg. Every order shall set forth:

- A. The name and address of the manufacturer.
- B. The name and address of the person or firm to which the order directed.
- C. Description of the liquor desired.
- D. Manner in which the liquor is to be packed (size and number of containers).
- E. Manner in which the liquor is to be shipped—name of carrier (if the carrier is a trucking company said carrier must hold a valid Transporter-for-Hire Permit issued by the board).

Every order shall be accompanied by a remittance in the amount of \$2.00. The board will not be liable to any vendor for the purchase price of liquor purchased hereunder in bulk, nor for any transportation charges or claims in connection therewith.

Upon approval by the board of an order from a manufacturer, the order will be forwarded to the person or firm to which directed and the vendor notified to make shipment to the Pennsylvania Liquor Control Board at the destination given in the order. The board will furnish the vendor with seals which shall be affixed by him to each container of the shipment to identify such container as a liquor purchased in Pennsylvania.

The board will also furnish the purchaser with a Notice of Release in duplicate, both copies of which shall be signed by the purchaser and surrendered to the carrier upon delivery of the liquor. The carrier will in turn sign the original in the space provided and forward it to the Liquor Control Board in Harrisburg, retaining the other copy for his file.

The board reserves the right to inspect purchases made under this regulation and also all records covering transactions under this regulation.

**Section 121.04. Records to be Maintained by Importers.**—The holder of an Importer License shall keep on the licensed premises for a period of two (2) years daily records on forms approved by the board, showing all transactions in liquor. These records shall show particularly the date of purchase, the name and address of the person from whom purchased, the kind and quantity of liquor purchased, and if purchased in bulk and bottled in Pennsylvania, the name and address of the manufacturer therein that bottled the bulk liquor, together with the kind and quantity thereof so purchased and bottled, the date of sale, the name and address of the person to whom sold and the kind, quantity and price of the liquor sold.

Records must also be maintained for all liquor withdrawn from stock. Such records shall show the date of withdrawal, quantity withdrawn and the purpose for which used.

**Section 121.05. Monthly Reports.**—All importers shall, on or before the 15th day of each and every month, file with the board monthly reports covering the operation of their licensed business during the preceding month. Said reports shall be on Form PLCB-44, with attached schedules on Forms 43-A and 43-B. Duplicate copy of these reports shall be retained on the licensed premises for a period of two (2) years.

**REGULATION 122 SIGNS, ADVERTISING, LABELING**

(Effective June 26, 1952; as amended December 23, 1965, May 8, 1967 and April 24, 1970)

Section 122.01 (As amended April 24, 1970) Billboard, Newspaper, Magazine, Radio and Television Advertising of Malt or Brewed Beverages. Manufacturers of malt or brewed beverages, importing distributors and distributors may advertise in or by billboards, newspapers, magazines, radio and television, provided such advertisement makes no direct or indirect reference to the price at which such manufacturer, importing distributor and/or distributor will sell malt or brewed beverages or imply an inducement by the use of words or expressions, such as "Special," "Save," "Big Value," "Get Acquainted Offer," etc.

Manufacturers of malt or brewed beverages and importing distributors may include the names and addresses of all distributors and importing distributors to whom they sell in the locality covered by such billboard, newspaper, magazine, radio and television advertising. No discrimination may be shown to one distributor or importing distributor over another, and if more than one distributor or importing distributor purchases the products from the manufacturer or importing distributor in a given area covered by any such advertisement, the names and addresses of all who purchase the product directly from the advertiser shall be displayed or mentioned in equal prominence; otherwise none may be displayed or mentioned.

Section 122.02 (As amended April 24, 1970) Window and Doorway Advertising of Brand Names. No licensee shall install or permit to be installed any electrically operated signs or devices, lithographs, framed pictures, cardboard displays, statuettes, plaques, placards, streamers and similar items advertising brand names and intended for window and doorway display on the licensed premises until he has submitted detailed information to the Board on Form PLCB-948, and obtained Board approval. Such signs shall not exceed 300 square inches in display area and must carry a serial or model number permanently affixed to the display for identification purposes. A photograph or sketch of the display sign must accompany the application Form PLCB-948.

Only one sign (electric, lithograph, etc.) advertising the products of one manufacturer may be installed in the show windows or doorways of any one establishment.

If the approved sign, lithograph or similar material is of maximum size, no crepe paper or other background material may be used in conjunction with the installation. When installing approved signs of smaller area, if crepe paper or other background or decorative material is used, the combined area of the approved sign and background or decoration shall not exceed the maximum area of 300 square inches.

No brand name advertising matter shall be painted or affixed in any manner to the inside or outside of the glass in show windows or doorways of licensed establishments.

Section 122.03 (As amended April 24, 1970) Interior Advertising of Brand Names (other than window and doorway) No licensee shall install or permit to be installed any electrically operated signs or devices,



lithographs, framed pictures, cardboard displays, statuettes, plaques, placards, streamers and similar point-of-sale items advertising brand names and intended for interior display on the licensed premises until he has submitted detailed information to the Board on Form RLCB-948, and obtained Board approval. No single piece of advertising shall exceed a cost of \$10.00, and such signs must carry a serial or model number permanently affixed to the display for identification purposes. A photograph or sketch of the display sign must accompany the application Form PLCB-948.

If the approved sign, lithograph or similar material is of maximum value no crepe paper or other background material may be used in conjunction with the installation. If the approved display piece is of less than the maximum value, crepe paper, background or other decorative material may be used; however, the combined cost of the piece of advertising and crepe paper, background, etc., may not exceed \$10.00.

The Liquor Code provides that the total cost of all such point-of-sale advertising matter relating to products of any one manufacturer shall not exceed the sum of \$20.00.

Signs or displays intended for use interchangeably in a window, doorway or in the interior must meet both statutory requirements as to maximum area of 300 square inches and maximum value of \$10.00.

**Section 122.04 (As amended April 24, 1970) Prohibition Against Giving and Accepting Things of Value.** Except as hereinafter provided, no licensee or group of licensees, or their servants, agents or employees, shall directly or indirectly, in person, individually or through a trade organization, contribute to or accept from another licensee or group of licensees of a different class, their servants, agents or employees, or a trade organization of licensees of a different class, anything of value by means of advertisements, contributions, purchase or sale of tickets, donations, or by any device or for any purpose whatsoever. Nothing contained herein shall prohibit manufacturers of alcoholic beverages and their servants, agents, or representatives from participating in the activities of State or National conventions of State or National organizations of retail liquor licensees or distributor and/or importing distributor malt beverage licensees.

Such participation shall be limited to the payment of registration fees entitling registrant to admission to the convention, to the insertion of advertising in the convention program of the State or National convention aforesaid and to the furnishing of food, beverages and entertainment to persons who are bona fide registrants at such conventions.

No licensee may furnish to, or do, or cause to be done for another licensee, and no licensee shall permit to be furnished to him, any painting of any sort, under any pretext whatsoever, whether or not such painting may be paid for by the licensee for whom done.

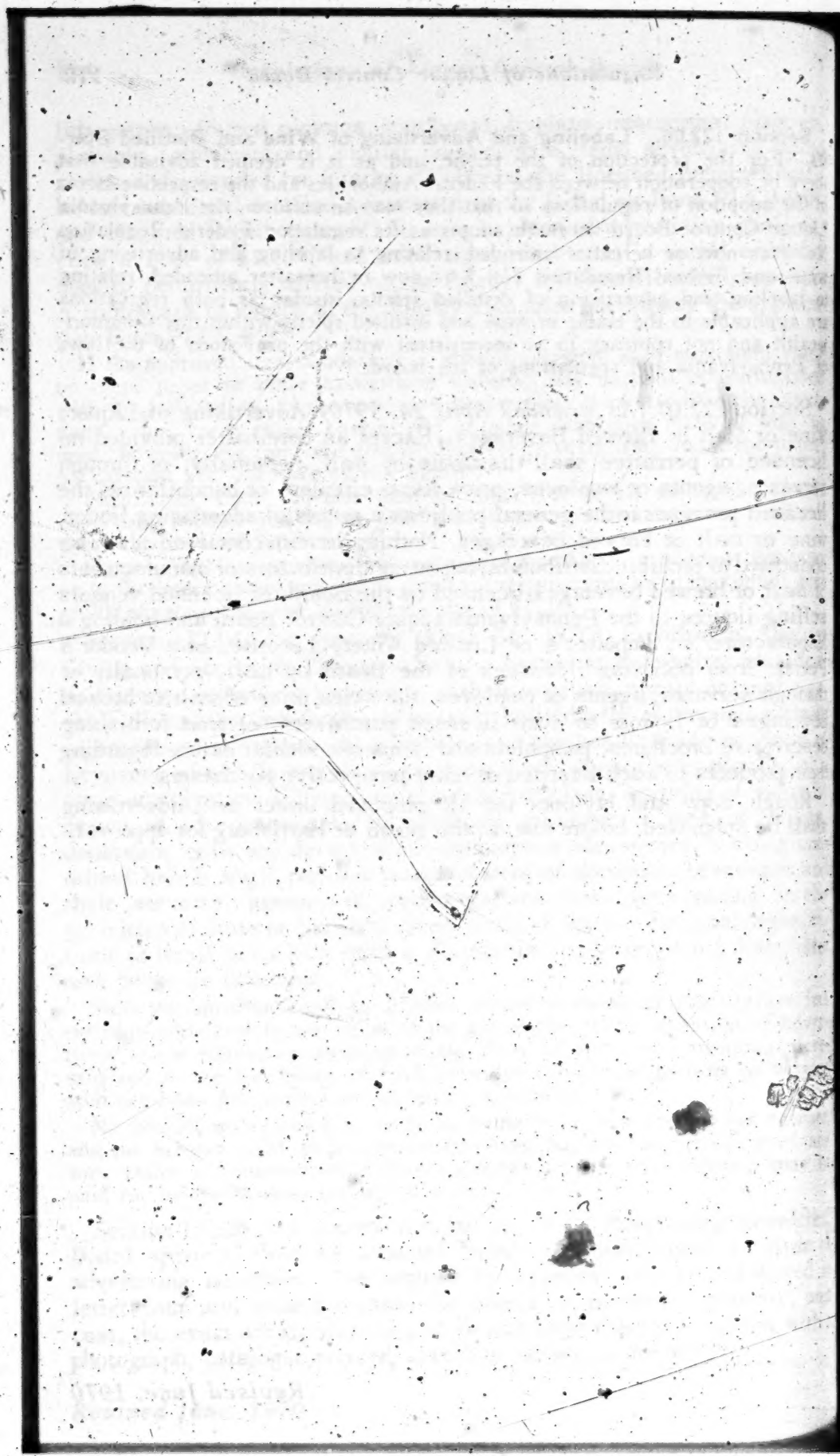
**Section 122.05 (As amended April 24, 1970) Advertising Novelties.** Board approval must be obtained before any distribution is made of advertising novelties. The request for approval may be submitted in letter form and should include the source of purchase, quantity, unit cost, the exact advertising copy to be imprinted thereon, together with a photograph, catalogue picture, sketch or sample of the novelty.



**Section 122.06. Labeling and Advertising of Wine and Distilled Spirits.**—For the protection of the public, and as it is deemed advisable that there be cooperation between the Federal Authorities and the respective states in the adoption of regulations so that they may be uniform, the Pennsylvania Liquor Control Board herewith adopts as its regulation Federal Regulation No. 4 as now or hereafter amended, relating to labeling and advertising of wine, and Federal Regulation No. 5 as now or hereafter amended, relating to labeling and advertising of distilled spirits, insofar as both regulations are applicable to the traffic in wine and distilled spirits within this Commonwealth and not contrary to or inconsistent with the provisions of the laws of Pennsylvania and regulations of the board.

**Section 122.07 (As amended April 24, 1970) Advertising of Liquor, Wine or Malt or Brewed Beverages.** Except as hereinafter provided no licensee or permittee shall distribute by mail, personally, or through servants, agents or employees, price lists, circulars or handbills off the licensed premises to the general public as a means of advertising liquor, wine or malt or brewed beverages. Nothing herein contained shall be construed to prohibit distributors, importing distributors or manufacturers of malt or brewed beverages licensed by the Board, or licensed vendors selling liquors to the Pennsylvania Liquor Control Board and holding a Manufacturer's, Importer's or Limited Winery License, or a Vendor's Permit from notifying licensees of the Board by mail, personally or through servants, agents or employees, the sales price of malt or brewed beverages or liquors to such licensed purchasers, or from furnishing descriptive brochures, pamphlets and items of a similar nature regarding their products to such licensed or other prospective purchasers.

Rough copy and lay-outs for all proposed direct mail advertising shall be submitted, before use, to the Board at Harrisburg for approval.



## REGULATION 123 DISTILLERY CERTIFICATE BROKERS

(Effective June 26, 1952)

**Section 123.01. Records to be Maintained.**—Distillery Certificate Brokers licensed by the Pennsylvania Liquor Control Board shall maintain their licensed Pennsylvania address complete and truthful records covering their operations as brokers in Pennsylvania. Such records shall include the name and address of the distillery or person from whom distillery bonded warehouse certificates are purchased, the serial numbers thereof, the purchase price, the date of purchase, number of barrels with their serial numbers and the age of the whiskey covered by such certificates.

The name and address of the person, or persons, to whom all certificates are sold and the selling price thereof, together with the date of sale shall also be included as shall all profits and commissions earned by the broker on the sale of certificates, whether such certificates were actually owned by the broker or not.

Records shall also be maintained, covering the receipt and disposition of all samples, obtained in accordance with the provisions of this regulation.

All records maintained by Distillery Certificate Brokers shall be open to inspection by authorized representatives of the Pennsylvania Liquor Control Board during regular business hours.

**Section 123.02. Samples for Brokers.**—Distillery Certificate Brokers licensed by the board may obtain samples of liquor as may be required from distillers in Pennsylvania or outside the State in the following manner: A written request in the form prescribed by the board shall be made by the broker to the distillery from which the sample, or samples, are desired and a copy of such letter shall be submitted at the same time to the Purchasing Division of the board at Harrisburg. This Division will, if the request is approved, assign a release number to the transaction and notify the distillery from which the sample, or samples, have been requested by letter that shipment may be made. The distillery will be furnished, with this letter of authority, the required number of decalcomania seals of the board which must be affixed to each bottle of the shipment. Samples may then be shipped, using the label supplied by the broker, to the Pennsylvania Liquor Control Board or either of the following designated stores: (or any other store which the board may designate) Store No. 5128, 1422 South Penn Square, Philadelphia, Pennsylvania, or Store No. 0207, 340 Boulevard of the Allies, Pittsburgh, Pennsylvania. A release under the same number will then be issued to the broker, which release must be presented in duplicate to the State Store in order to obtain possession of the sample, or samples.

All samples shipped to brokers in accordance with this regulation must be packaged in four (4) ounce bottles bearing labels with at least the following information:

- A. Name and location of the distillery.
- B. Exact date of distillation.
- C. Proof when entered into bond.
- D. Date withdrawn from bond.
- E. Proof when withdrawn from bond.
- F. Serial number of containers from which withdrawn.

In order that the merchandise may be properly identified when it reaches the State Store, the distiller shall mark plainly on the package the release number as assigned by the Purchasing Division, and the name of the Distillery Certificate Broker.



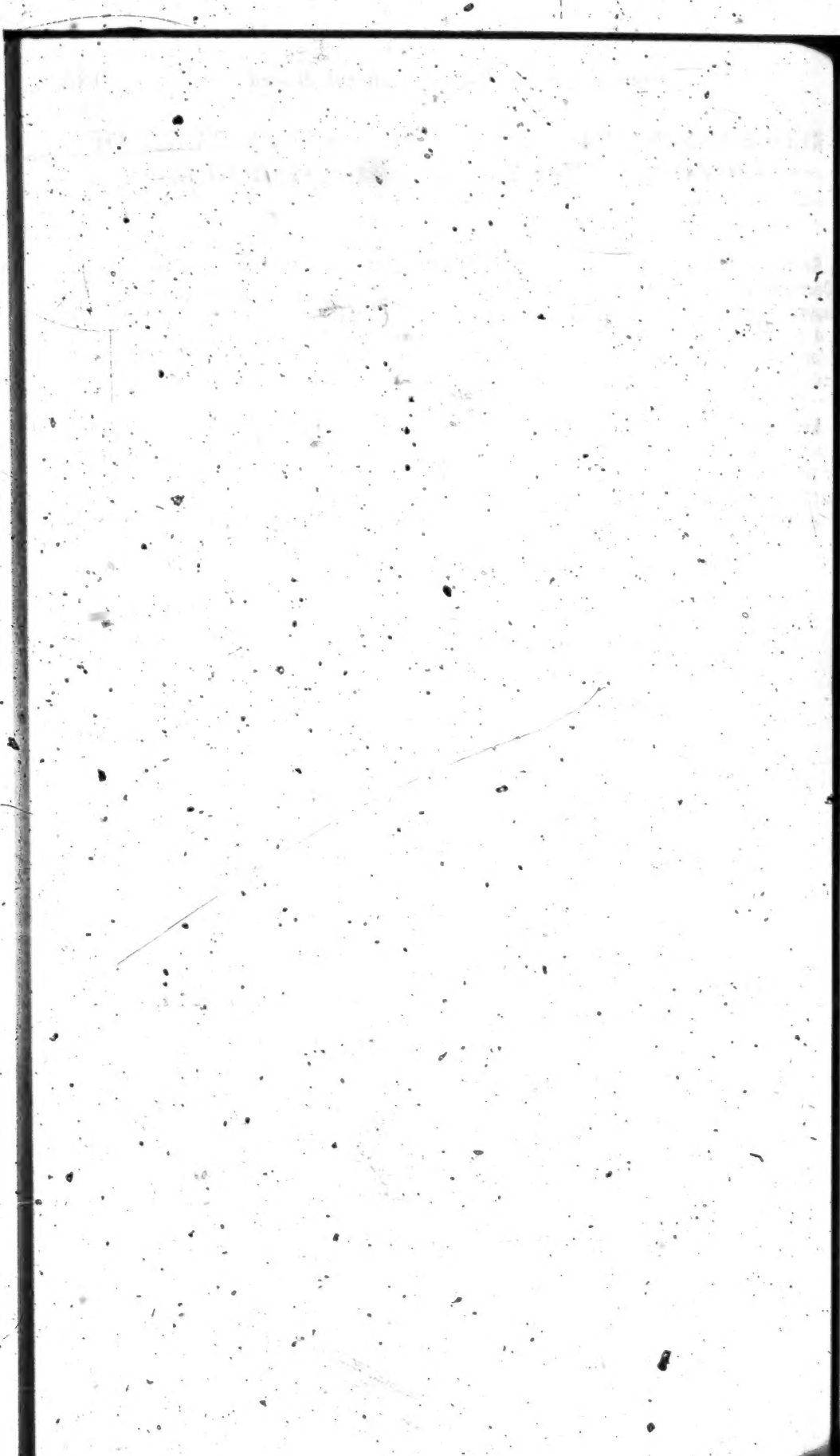
**REGULATION 124 UNLAWFUL MANUFACTURE OF  
LIQUOR; COMPENSATION TO INFORMERS**

*(Effective June 26, 1952)*

**Section 124.01. Location of Illicit Stills; Arrest and Conviction of Operators.**—The efficient administration of the Liquor Code requires the suppression of the unlawful manufacture of intoxicating liquor, and to that end the Pennsylvania Liquor Control Board will in its discretion pay for information leading to the location and seizure of illicit stills and the arrest and conviction of persons engaged in the operation of such stills.

**Section 124.02. Compensation.**—Compensation to informers shall be based in each case upon the gallon capacity of the illicit still seized by reason of the information furnished, and the amount of such compensation shall be fixed by agreement between the board and the informer but will be paid only after the seizure of such still by the duly constituted agents of the board.





**REGULATION 125 SALES TO THE BOARD OF LIQUORS, OTHER THAN WINES***(Effective June 26, 1952)*

**Section 125.01. Definitions.**—The following words or phrases, unless the context clearly indicates otherwise, shall have the meanings ascribed to them in this section:

- A. "Board" shall mean the Pennsylvania Liquor Control Board of this Commonwealth.
- B. "Person" shall mean every natural person, association, or corporation.
- C. "Manufacturer" shall mean any person engaged in the manufacture, rectification, or compounding of liquors, other than wines, or any agent or representative of such manufacturer.
- D. "State, territory, or country of origin" shall mean the place where liquors other than wines, offered for sale to the board, are manufactured, rectified or compounded (prepared for the market).

**Section 125.02. Sales to the Board.**—Persons desiring to sell to the board, liquors other than wines not manufactured in this Commonwealth, shall make application for, and be granted, a Permit by the board before such liquor will be purchased from such persons. (Form of application will be furnished by the board). The fee for such permit shall be on a reciprocal basis, as provided in the Liquor Code. However, a licensed Pennsylvania Importer shall not be required to obtain such Permit if the liquor is wholly owned by the Importer. Persons holding Importer Licenses issued by the board who desire to sell to the board, liquors other than wine manufactured outside of this Commonwealth, and not wholly owned by the Importer, shall obtain a Permit and pay to the board such reciprocal fee, if any, if not previously paid by or for the manufacturer thereof.



## **REGULATION 126 OFFICIAL SEAL OF THE BOARD (DECALCOMANIA SEALS)**

*(Effective June 26, 1952; as amended June 5 1958)*

**Section 126.01. Seals to be Affixed to Bottles.**—It shall be the duty of each vendor supplying liquor to the Pennsylvania Liquor Control Board to affix to all containers and bottles shipped to the board the official decalcomania seal of the board. By arrangement in advance, representatives of the board may affix the official decalcomania seal of the board to unsolicited special orders and to merchandise received from beyond geographical boundaries of the United States (foreign imports), and vendors supplying such merchandise will be invoiced at cost to the board, but not less than fifty cents (50¢) per case for this service.

**Section 126.02. Seals to be Accounted for by Vendors.**—Vendors receiving, using, affixing or otherwise disposing of any decalcomania seals provided for in this regulation shall be held strictly accountable for all such seals that come into the vendor's possession. No credit for losses or tolerance will be allowed unless and until audits of the vendors' seal accounts are made and/or adjustment of such accounts approved in writing by the board.

All damaged or mutilated decalcomania seals that vendors consider unusable for affixing to bottles shall be retained by the vendors for examination by authorized representatives of the board, and such seals shall be destroyed by such representatives if and when they are satisfied that the seals are unusable. Explanation for losses of seals not accounted for must be made to the satisfaction of the board.

Merchandise presealed in anticipation of its shipment to the board, and merchandise so sealed shipped to and returned by the board to vendors shall not be shipped by such vendors to any person or persons other than the board unless and until arrangements have been made with the board for the removal of and accounting for such seals. Seals shall not be removed from presealed merchandise for any reason whatever unless and until arrangements have been made with the board for the removal and accounting for such seals.

Vendors may furnish to manufacturers, wholesalers and bottlers of liquor supplying the liquor to such vendors for delivery to the board, decalcomania seals provided such seals are either transmitted by registered mail and Return Receipt Card retained, or delivered personally and receipt therefore obtained and retained by the vendors. All such Registered—Return Receipt Cards and personal delivery receipts shall be exhibited by the vendors to representatives of the board upon request.

Decalcomania seals sold to vendors furnishing liquor to the board shall be held and used by such vendors subject to the provisions of this regulation, and the board reserves the right to require the return of such seals as the board may deem unnecessary or when in the opinion of the board an excessive amount of seals are in the possession of vendors. The board will reimburse vendors for the cost price paid by them for all usable seals returned to the board.

**Section 126.03. Records to be Maintained.**—Each vendor coming into possession of Pennsylvania Liquor Control Board decalcomania seals will be required to keep true and accurate records of all seals received, and from whom received, and all seals affixed to bottles for shipment to the board; record of all shipments of sealed bottles to the board; records of all seals mutilated or lost in connection with bottling operations; seal losses for any

other reason whatsoever; and, all seals transferred to any subsidiary or any other agency authorized to receive them. These records shall be maintained currently, reported monthly or as otherwise required, and be available and subject to audit by authorized representatives of the board or the Auditor General at any time.

**Section 126.04.** *(As amended, June 5, 1958)* **Reports.**—Vendors receiving, using or affixing decalcomania seals shall file with the board monthly decalcomania seal reports and/or such other reports with respect to seals as the board shall from time to time prescribe. All such reports shall be made upon forms furnished by the board, and shall be signed and sworn to by the vendors or by their duly authorized agents. The monthly reports shall be filed with the board on or before the 15th day of the month immediately succeeding the month for which the report is prepared.

**Section 126.05. Cost of an Annual Audit.**—The full amount of the transportation and subsistence expenses of authorized representatives of the board, incurred in making an annual audit of seals of any vendor outside of this Commonwealth, shall be paid to the board by such vendor upon presentation of an invoice.

**Section 126.06. Penalties.**—Violation of any of the provisions of this regulation by a vendor shall be deemed sufficient cause for citation of such vendor and the suspension or revocation of his license and/or his sales permit, and/or the suspension of sales of the vendor's merchandise at Pennsylvania Liquor Stores for such period as the board shall determine.



## REGULATION 127 PERSONAL PHOTOGRAPHS OF APPLICANTS, MANAGERS AND PHOTOGRAPHS OF PREMISES

(Effective June 26, 1952)

**Section 127.01. Personal Photographs.**—Two (2) photographs shall be required of all persons applying as individuals, members of a partnership, or principal officers of a corporation, for retail liquor licenses, except public service and club licenses; retail dispenser malt beverage licenses, except public service and club licenses; and distributor or importing distributor licenses. Applications for appointment of managers, shall not be considered unless accompanied by two photographs of the proposed manager. Personal photographs shall bear, on the back, the name of the individual and the address of the establishment, shall be at least 2" x 3" in size, unmounted, and taken within one year of the date submitted.

Two (2) photographs shall be required of all applicants for Registration as Agent. Photographs of the agent to be registered shall be 1½" square, unmounted, and taken within 30 days of the date of filing.

**Section 127.02. Photographs of Premises.**—Applications for new retail liquor or retail dispenser malt beverage licenses and all applications for transfer thereof, except public service licenses, shall be accompanied by four (4) photographs of the premises proposed to be licensed, two (2) photographs to be a view of the exterior of the building, showing the street number, if any, the other two (2) to be a view of the main serving room.

Applications for new distributor and importing distributor licenses and all applications for transfer thereof, shall be accompanied by two (2) photographs each of the exterior of the principal place of business and all additional storage warehouses, showing the street number, if any.

All photographs shall be at least 5" x 7" in size, unmounted, and shall bear on the back the name of the applicant and address of the establishment. If any material physical change is made to the exterior or interior of the licensed premises after the license has been issued, new photographs shall be required.

**Section 127.03. Renewal of Photographs.**—Personal photographs of licensees, principal officers of a corporation, except public service and club licensees; and managers of licensed establishments shall be renewed every three years. The new photographs shall be filed with the application for renewal of license at regular three year intervals.

Personal photographs of Registered Agents shall be renewed every year. New photographs, as required herein, shall be filed with each application for renewal of Registration of Agent.



## **REGULATION 128 SALES OF LIQUOR TO CHEMISTS AND MANUFACTURING PHARMACISTS**

*(Effective October 10, 1952)*

**Section 128.01. Requirement for Liquor.**—Chemists and manufacturing pharmacists may, as herein prescribed, obtain through the State Stores at wholesale prices, or through the Bureau of Purchases of the board in Harrisburg, liquors customarily and actually used in the operation of their business.

Chemists, desiring to obtain liquor solely for experimental purposes from manufacturers or vendors within or outside this Commonwealth, shall apply to the board at Harrisburg, for permission, which will be granted or refused at the discretion of the board.

**Section 128.02. Applications and Permits.**—Every chemist and manufacturing pharmacist who desire to purchase liquors under this regulation shall apply to the board for a permit.

Application for such permit shall be made by and in the name of the owner, if a natural person; by an authorized partner, if a partnership; or, by a principal officer, if a corporation. Every application shall be accompanied by a permit fee of \$5.00, and shall set forth:

- A. The name under which the applicant's business is operated.
- B. The address, including street and number, of the applicant's principal place of business in this Commonwealth.
- C. The name and description of each product or process in which liquor is used.
- D. The name, type and quantity of liquor customarily and actually used in each product or process.
- E. Such other information as the board shall require.

Every application shall be verified by oath or affirmation of the applicant that the liquors described in the application are to be used solely for the listed purposes.

Upon receipt of the application in proper form, the board will in its discretion issue to such person a Wholesale Liquor Purchase Permit Card authorizing the purchase of the type or types of liquor required by him.

Such cards shall be subject to the provisions of Regulation 105, entitled: "Wholesale Liquor Purchase Permit Cards."

Permittees may purchase the liquor designated in their permits in either manner prescribed herein.

All permits herein described shall expire December 31, of the year in which issued and may be renewed upon the filing, not later than December 1, of an application for renewal, accompanied by the prescribed permit fee of \$5.00.

**Section 128.03. Wholesale Sales at State Stores.**—Upon presentation of the permit, such permittees may purchase liquor at wholesale from stock merchandise or through special order, at any State Liquor Store. Sales at wholesale will be made only in containers not exceeding one gallon each and will be at such rates as the board shall establish.

**Section 128.04. Bulk Purchases.**—Bulk purchases will be allowed under this regulation only in quantities of fifty (50) gallons or more per order

consisting of not less than twelve (12) gallons per type in containers of one gallon or larger capacity. Where operating conditions do not permit supplying such sizes, the board may, upon receipt of a written application setting forth satisfactory reasons, permit the use of smaller sizes. The board will not approve applications for sizes smaller than a gallon if the same brands are listed for sale in State Stores. Permittees shall place their orders with the Bureau of Purchases of the board at Harrisburg. Each order shall set forth:

- A. Name and address of the purchaser.
- B. Name and address of the person or firm to whom the order is directed.
- C. Brand name and/or description of the liquor desired.
- D. Manner in which the liquor is to be packed (size and number of containers).
- E. Manner in which the liquor is to be shipped—name of carrier (if the carrier is a trucking company, such carrier must hold a valid transporter-for-hire license issued by the board).
- F. Destination to which shipment is to be made.

Every order shall be accompanied by a remittance in the amount of \$2.00. The board will not be liable to any vendor for the purchase price of liquor purchased hereunder, nor for any transportation charges, or claims, in connection therewith.

Upon approval by the board of an order from a permittee, the order will be forwarded to the specified vendor who will be notified to make shipment to the Pennsylvania Liquor Control Board at the destination given in the order. The board will furnish such vendor with seals which shall be affixed by him to each container of the shipment to identify such container as a legal purchase in Pennsylvania.

The board will also furnish the purchaser with a Notice of Release in duplicate, both copies of which shall be signed by the purchaser and surrendered to the carrier upon delivery of the liquor. The carrier will sign the original in the space provided and forward it to the board in Harrisburg, retaining the other copy for his file.

The board reserves the right to inspect purchases made under this regulation, as well as all records covering transactions hereunder.

**Section 128.05. Refusal of Board to Purchase Liquor, and Revocation of Permits.**—The board may in any case refuse to purchase or import liquor for any permittee, or may revoke any permit issued under this regulation, if after notice and hearing it shall appear to the board that the permittee has used any liquor purchased under this regulation for any purpose other than that set forth in his application, or has violated any law of the Commonwealth or regulation of the board relating to liquor, malt or brewed beverage or alcohol. The action of the board in refusing to purchase liquor and/or revoking a permit, shall be final.

**REGULATION 129 PROMOTION OF SALE OF LIQUORS BY VENDORS**

*(Effective November 2, 1964; Amended December 10, 1968)*

**Section 129.01. Definitions.** The following words, unless the context clearly indicates otherwise, shall have the meanings hereinafter ascribed to them:

A. "Licensee" shall mean any person, partnership, association or corporation holding a Pennsylvania hotel, restaurant, club, or public service liquor license..

B. "Licensed Vendor" shall mean a natural person, partnership, association or corporation selling liquors to the Pennsylvania Liquor Control Board and holding a Pennsylvania Manufacturer's or Importer's License, or a Vendor's Permit.

C. "Vendor's Permit" shall mean a permit issued to a non-resident vendor under the provisions of Section 208 (j) of the Liquor Code, entitling such vendor to register agents in accordance with this regulation. An application for such permit shall be filed with the Board accompanied by a filing fee of \$20.00, permit fee of \$100.00 and an approved corporate surety bond in the penal sum of \$2,000.00. Such permit shall be issued for the calendar year.

D. "Agent" shall mean any individual employed and registered as herein provided by a Licensed Vendor to promote the sale of liquor through Pennsylvania State Liquor Stores, but no person who is a licensee as herein defined, or the holder of a malt or brewed beverage license, or an officer, director, agent or employee of either a licensee as defined or a malt or brewed beverage licensee, or who is not at least 21 years of age, a citizen of the United States, and of good repute, shall be eligible to be registered as an agent of any vendor under this regulation.

E. "Special Order Listing" shall mean the formal filing with the Board, on its prescribed form, of such information as the Board shall require as to brand, age, proof, type, blend, cost, etc., of liquors to be sold through the Special Liquor Order Division, but no such listing shall become effective until approved by the Board or its duly authorized representative.

F. "Stock Merchandise" shall mean any liquors which are obtainable at a State Liquor Store, without placing a special liquor order.

G. "Miniature" shall mean any container, as prepared by the manufacturer for the market, containing less than six (6) ounces of any liquor.

H. Other words and phrases used in this regulation shall have the meaning ascribed to them in the Liquor Code as amended, and if not defined therein shall have their usual and customary meanings.



**Section 129.02. Registration of Agents.****A. Solicitation by Un-Registered Agents Prohibited**

No vendor shall employ agents, salesmen or solicitors to promote the sale of his products in this Commonwealth unless and until such agents, salesmen or solicitors have been registered with the Board in accordance with the provisions of this regulation and have been issued identification cards, as herein provided. No individual shall act as an agent, salesman or solicitor for any vendor in promoting the sales of such vendor's liquors in this Commonwealth unless and until he has been properly registered and has been issued such identification card.

**B. Applications for Registration**

A vendor of liquors to the Pennsylvania Liquor Control Board who desires to employ agents to call upon retail licensees and other persons to promote the sale of his brands of liquor through the State Liquor Stores and/or on special order, must be the holder of a Pennsylvania Manufacturer's or Importer's Liquor License, or a Vendor's Permit. Such vendor is then known as a "Licensed Vendor" and is eligible to register agents in accordance with this regulation. The "Licensed Vendor" shall make application for the registration of agents on the form provided by the Board, setting forth such information as the Board may from time to time require.

The application shall set forth the full address of the place where complete records are maintained covering the vendor's Pennsylvania operations. In the case of a Pennsylvania Manufacturer or Importer, such records shall be maintained within this Commonwealth. If, in the case of the holder of a Vendor's Permit, the records are maintained outside the Commonwealth, the application shall contain an agreement by the vendor that the records are, during all business hours, open to inspection and audit by representatives of this Board, and that the full amount of transportation and traveling expenses of such representatives incurred in making the inspection and/or audit outside this Commonwealth will be paid to the Board by such vendor.

With each vendor's application there shall be filed a "Statement of Agent" for each agent for whom registration is requested. This "Statement of Agent" shall be on the form provided by the Board and shall contain such information as the Board may from time to time require. Accompanying the "Statement of Agent" there shall be two unmounted photographs of each agent  $1\frac{1}{2}$ " square and taken within thirty days of the date of filing.

The agent to be registered shall present himself for fingerprinting at any one of the Enforcement Offices of the Board located at Allentown, Altoona, Erie, Harrisburg, Philadelphia, Pittsburgh, Punxsunaweg, Wilkes-Barre and Williamsport. The "Statement of Agent" and photographs must be submitted by the agent at this time. If the agent to be registered has been previously registered and fingerprinted as an agent as herein defined, the provisions of this paragraph may be waived and the application and photographs submitted directly to Harrisburg.

C. Filing Fee and Bond.

In order to register a new agent, a vendor shall be required to pay a filing fee of \$20.00. In the event the application for registration is refused the filing fee will be retained by the Board. All registrations shall expire December 31, of the year in which they become effective.

The application for registration of agents shall also be accompanied by an approved corporate surety bond (form to be furnished by the Board) in the penal sum of \$500.00 for each agent to be registered. Each bond shall be conditioned for the faithful observance by the registered agent of all the laws of this Commonwealth relating to alcohol, liquor and malt or brewed beverages and all the regulations of the Board.

D. Renewal of Registration

The registration of agent may be renewed for a period of one calendar year upon the filing by the Licensed Vendor of an application for renewal of registration, new surety bond and the payment of a filing fee of \$20.00. A "Statement of Agent" for each agent to be registered shall also accompany the application as shall new photographs of each agent, 2 1/4" square, taken within thirty days of the filing of the application. Applications for renewal of registration, accompanied by all the necessary forms, etc., shall be filed with the Board at the Harrisburg office not later than December 1, of each year.

Section 129.03. Privileges of Registered Agents. Agents properly registered by a Licensed Vendor and holding identification cards as herein provided, may advertise and promote the sale of stock merchandise by "missionary work" of only those brands sold to the Board by the vendor by whom said agents are registered. Missionary work may include the use of the "Agent's Order" form approved by the Board.

Agents may also solicit and obtain from retail purchasers orders for stock merchandise or gift certificates for stock merchandise.

Agents may also solicit and obtain from licensees or other persons, orders for those brands of liquor which have been listed with the Special Order Division, as herein provided, by the vendors by whom said agents are registered. All special orders obtained by the registered agents shall be filed with one of the State Liquor Stores as provided herein.

Section 129.04. Identification Cards - Individual Vendors and Registered Agents. No vendor shall personally solicit orders or promote the sale of his products unless he has submitted photographs of himself and has been issued an identification card, as herein provided for registered agents. No application, bond, or fee will be required for this card.

Upon approval by the Board of a Licensed Vendor's application for registration of agents, there shall be issued to such authorized agents, identification cards containing the name and address of the Licensed Vendor, and the name and physical description of the agent. There shall also be affixed to the identification card a photograph of the agent, and each card shall be countersigned by a representative of the Pennsyl-

vania Liquor Control Board. The identification card, if mailed, will be mailed by the Board to the applicant Licensed Vendor for delivery to the agent. The agent shall return the identification card to the Licensed Vendor when requested.

When the employment of any agent is terminated, the vendor shall immediately notify the Board on the form provided for cancellation and the identification card issued to the agent shall be surrendered to the Board. Liability on the bond which was filed, covering such agent, will be released for the balance of the registration period if the Board is satisfied that such agent has not within the past year, violated any of the laws of this Commonwealth relating to liquor, alcohol, or malt brewed beverages, or any regulation of the Board.

**Section 129.05. Refusal and Cancellation of Registrations.** The Pennsylvania Liquor Control Board reserves the right to refuse any application for registration of agent. A Licensed Vendor may request the cancellation of any of his or its agent's registration by returning the identification card and order books (or notice of transfer of books) issued to the agent, together with a written request for such cancellation on the form provided by the Board. Forms will be furnished upon request to the Bureau of Licensing, Pennsylvania Liquor Control Board, Harrisburg, Pennsylvania. The Board will, in its discretion, cancel the registration so requested, and if cancelled, issue a release from subsequent liability on the surety bond originally filed, provided there has been no breach of the conditions of said bond.

**Section 129.06. Special Order Listings.** No brand of liquor shall be accepted for Special Order Listing under this regulation unless and until such brand conforms with the Board's requirements for listing of stock merchandise.

All listings of liquor, except wine, shall be limited to case quantities containing not less than 240 fluid ounces unless specially authorized by the Board. Listings of wines and liquors in quarts will not be accepted if  $\frac{4}{5}$  quarts of the same brand are sold as stock merchandise. Also, listings in  $\frac{4}{5}$  quarts will not be accepted if the same brand is sold in quarts as stock merchandise. Other listings shall be at the discretion of the Board.

If a vendor has a brand of liquor except wine listed as stock merchandise, the Board will not accept for listing by him under this regulation any other brand of the same class, unless the cost to the Board is at least \$3.00 per case more than the cost of the brand listed as stock merchandise, except when specially authorized by the Board.

For the purpose of this regulation, change of proof or age shall not be considered as a different class except when such change in proof or age causes a change in class under Federal law or regulations.

If a vendor has a brand of liquor except wine, listed as stock merchandise and stocked in the State Stores in two bottle sizes, he may list the same brand in a third bottle size on special order under this regulation unless specially authorized by the Board.



If a vendor has any stock listed brand of United States wine selling at the lowest price; then the Board will not accept from him for Special Liquor Order Listing another brand of the same type that would sell for the same or lower price.

No listing of combination cases or assortments containing whiskies or dry gins will be accepted or considered by the Board. No listing shall be effective, nor shall prices be quoted, nor orders solicited therefor, until such listing has been approved by the Board and the selling prices formally released, in writing, to the vendor. The cost prices upon which such selling prices are based, shall not become effective until the aforementioned selling prices are released.

The Board reserves the right to cancel at any time any special order listing, or to list any brand or brands of liquor as stock merchandise.

It is the intent of this regulation that vendors shall not compete on special order with items sold to the Pennsylvania Liquor Control Board as stock merchandise.

**Section 129.07. Order Books.** Upon approval of the Licensed Vendor's application for registration and the issuance of identification cards to his registered agents, the Board, upon request, will issue to such Licensed Vendor order books for himself and his registered agents, in which each special order for liquors shall be entered. Each agent's order shall be prepared in quadruplicate and shall bear the signature and address of the person from whom the order is obtained, and the signature of the registered agent. In the case of a licensee, the order shall in addition set forth the license number. The agent's original order shall be forwarded by the Licensed Vendor or his registered agent to a State Liquor Store not later than the next business day after the order is obtained. One copy of the order shall be furnished by the vendor or his registered agent to the person from whom the order is obtained; one copy shall be retained by the Licensed Vendor for his records; and, the other copy shall remain in the agent's order book. When the order book of an agent has been filled, it shall be returned to the Pennsylvania Liquor Control Board at Harrisburg. The Board reserves the right to examine any records of any Licensed Vendor and/or his registered agents pertaining to all transactions under this regulation.

Upon cancellation of an agent's registration, partially used order books may be assigned to and used by another agent of the same vendor after written request to, and approval by, the Special Liquor Order Division of the Board at Harrisburg.

Licensed Vendors shall pay to the Pennsylvania Liquor Control Board the sum of \$1.00 for each order book furnished to them, such order books to contain fifty (50) sets of order blanks. A Licensed Vendor shall not be entitled to have in his possession at any one time more than four (4) order books for each agent registered with the Board.

**Section 129.08. Special Orders - Requirements and Conditions.** All agent's orders obtained in accordance with the provisions of this regulation and presented by Licensed Vendors or their registered agents to State Liquor Stores, for and on behalf of licensees, shall be filed at the

established wholesale case prices prescribed by the Board for sales to licensees. Provided, however, that the wholesale prices shall apply only if the retail value of the order equals or exceeds the minimum retail value established by the Board for obtaining licensee's discount.

All agent's orders presented at State Liquor Stores by registered agents on behalf of other than licensees, shall be at the established retail Special Liquor Order prices. No order shall be taken for less than case quantities as hereinbefore provided.

A Licensed Vendor or his or its registered agents, shall not obtain or accept an order from either a licensee or other person under this regulation unless there is obtained from the licensee or other person at the same time, a sum not less than the amount required by the Board for deposit on Special Order sales under the Liquor Code (now 25%). State Liquor Stores may, at the time of receiving the agent's order and/or the releasing of the liquor at such stores to the purchaser thereof, accept checks of licensees in payment.

**A LICENSED VENDOR OR HIS REGISTERED AGENT SHALL NOT EXTEND CREDIT TO A LICENSEE OR ANY OTHER PERSON.**

Unless specially authorized by the Board, no liquor, except wine, shall be delivered to the Board unless each bottle or container has attached to it the official seal of the Board.

**Section 129.09. Special Orders - Restrictions.** Licensed Vendor and their registered agents shall not place Special Orders for liquor at State Liquor Stores unless they have agents' orders, prepared on the prescribed agents' order book forms, and signed by the licensee or his or his duly authorized agent, or in the case of a retail sale, by the customer.

Except by special permission of the Board, no special order merchandise sold under this regulation shall be delivered to any State Liquor Store until the Licensed Vendor has received from the Board a formal purchase order calling for delivery of such liquor. Each case of liquor so delivered shall have clearly marked thereon, in addition to the information required by Federal or State regulations, the purchase order number, the store order number, the brand and size, the code number called for in the purchase order, and such other information as the Board may prescribe.

Liquor sold to licensees will be released only at the State Store, to the State Store, to the licensee or his agent named on the licensee's Wholesale Purchase Permit Card.

Special orders placed by a licensed vendor or his registered agent for a retail customer may be released by the State Store to said vendor's registered agent for delivery to the retail customer.

**Section 129.10. Special Orders for Miniatures, Etc.** Orders for miniatures of liquor will not be accepted either by the Board or the State Liquor Stores from licensees or other persons. Orders from licensees for half-pints of liquor, except wine, will not be accepted,



Section 129.11. Samples. A registered agent of a Licensed Vendor shall not be permitted to use as samples during any calendar month more than one case of each brand of liquor sold by such vendor to the Board. Such samples of liquor shall be purchased only through the Board, and upon payment to the Board of a sum equal to the cost price to the Board plus 25 per cent and any taxes that may be required. The purchase of samples at retail in any State Store is prohibited. A separate order for samples shall be placed for each registered agent, and the agent's name shall appear on the order. No order shall be filled for more than one case of each brand per agent, and no agent shall have in his possession at any time more than one case of each brand; except that the vendor or vendor's authorized supervisor may be permitted to purchase and distribute to his registered agents the herein prescribed allotment for all such agents under his supervision. The vendor shall, upon request, file with the Board a statement setting forth the name of his or its authorized supervisor, together with the territories and names of all registered agents under his supervision.

The samples hereinbefore mentioned shall be restricted in size to half pints of distilled spirits, and to half bottles or smaller sizes of wine, except where operating conditions do not permit supplying such sizes. In such cases, the Board may, upon proper application filed with it setting forth satisfactory reasons, permit the use of other sizes as samples. All such sample bottles, before leaving the custody of the State Store shall have affixed thereto a separate label, or lettering on the commercial label, at least one-quarter inch high, reading:

"SAMPLE. NOT TO BE SOLD. POSSESSION OF THIS BOTTLE BY LICENSEE UNLAWFUL."

Each Licensed Vendor shall keep a permanent stock ledger record of all the samples so purchased by him, and the names of the agents to whom samples were issued, together with the quantity and brand. Each authorized supervisor of a vendor shall keep in his office in Pennsylvania, a permanent stock ledger record of all samples purchased by him and distributed by him to his registered agents as provided in this section. A requisition shall be prepared for each package removed from sample stock, which requisition shall bear the signature of the agent receiving the merchandise.

Section 129.12. Unsolicited Special Orders. Nothing in this regulation shall affect or apply to unsolicited Special Liquor Orders as provided in the Liquor Code as amended, except the prohibition covering acceptance of orders for miniatures and/or half-pints of liquor, deposit required, and the minimum case quantity.

Section 129.13. Use of Stock Merchandise Request Forms. Agents engaged in missionary work, promoting the sale of stock merchandise, may use the "Agent's Order" form PLCB-115, to assure the availability of any merchandise requested by licensees in full case lots. Licensed Vendors may obtain supplies of this form for distribution

to their agents from the Bureau of Purchases, Pennsylvania Liquor Control Board, Harrisburg, Pennsylvania, at a cost of \$1.00 per book.

All required information must be furnished and the completed forms must be directed to the State Store from which the licensee will purchase the merchandise. Only requests for full cases received at the store by mail or delivered to the store by a retail licensee will be accepted. Licensed Vendors or their agents shall not deliver such requests to a State Store.

Vendors or their agents shall not accept any cash deposit on stock merchandise requests.

The use of this form is restricted to promotional work with retail licensees.

**Section 129.14. Vendor Agent's Authorization to Purchase for Retail Customers.** Registered Vendor Agents by using Form PLCB-115 - Vendor Agent's Authorization to Purchase, may purchase stock merchandise or gift certificates for stock merchandise for retail customers.

Licensed Vendors may obtain supplies of this form for distribution to their agents from the Bureau of Purchases, Pennsylvania Liquor Control Board, Harrisburg, Pennsylvania at a cost of \$1.00 for a book of fifty (50) order sets.

When a retail customer has signed this form, it may be presented by the agent to any Pennsylvania State Store as authorization for the agent to purchase for the customer either stock merchandise or gift certificates for the quantity and brand specified by the customer.

**Section 129.15. Unlawful Acts.** Section 491, sub-section 14, and Section 493, sub-sections 22, 23 and 24 of the Liquor Code, provide that certain practices in connection with the sale of liquor shall be unlawful. Although not limiting the scope of the statutory provisions, the following practices are in violation of one or more of these sections:

- A. To grant, allow, pay or rebate any cash, merchandise or any other thing of value, to any licensee, their servants, agents, or employees, including the purchase of merchandise at retail for delivery to a licensee; to grant, allow or pay anything of value to a licensee, their servants, agents, or employees, for the privilege of advertising display; to purchase drinks "for the house" to induce the purchase of merchandise.
- B. To visit State Stores or warehouses or directly or indirectly contact the store or warehouse employees for the purpose of promoting the sales of merchandise.
- C. To solicit or induce PLCB personnel to promote the sale of particular brands.
- D. To apply at State Stores, or of store personnel, for information to Stores' merchandise inventories.
- E. To furnish entertainment or to offer gratuities to PLCB personnel.
- F. To grant, allow or pay money or anything of substantial value (which includes tips) to licensees, their servants, agents or employees, to induce the sale of merchandise.

- G. To represent, expressly or by implication, that he is connected with any department of the State Government or has any influence therewith.
- H. To repurchase, replace or exchange any liquors purchased by licensees or other persons from State Stores. Defective liquors will be replaced only by the State Store from which such liquor were purchased, in accordance with Board Procedure.

Section 129.16. Agency Provisions. Licensed Vendors and their registered agents shall, under this regulation, for all intents and purposes except as herein restricted, be considered the agents of the persons from whom they obtain special liquor orders. Neither the Commonwealth nor the Pennsylvania Liquor Control Board will be responsible for the proper disposition of any moneys collected from a licensee or other person by a Licensed Vendor or his agents. Under no circumstances shall the Commonwealth or the Liquor Control Board be responsible for any actions of a Licensed Vendor or his agents under this regulation.

Section 129.17. Records. Every Licensed Vendor shall maintain for two (2) years complete and accurate records covering all operations in Pennsylvania, which shall be open to inspection by representatives of the Board. These records shall include salaries or commissions of all registered agents and other employees working in Pennsylvania, expenses of such employees supported by detailed vouchers, all promotional and advertising expenditures, special order sales, and Stock Merchandise Requests.

All vendor's agents operating in Pennsylvania, whether licensed or not, shall maintain complete and truthful records covering their operations in Pennsylvania, which records shall be open to inspection by representatives of the Board.

Section 129.18. Liability of Vendor. In the absence of persuasive evidence to the contrary, it will be presumed by the Board that any representative of a vendor who violates this regulation acts with the consent and knowledge of the vendor, and/or his employer, and penalties will be fixed accordingly on agent, vendor and/or employer.

Section 129.19. Penalties - Forfeiture. Upon learning of any violation of this regulation or of any other regulation promulgated by the Board, or of any laws of this Commonwealth relating to liquor, alcohol, or malt or brewed beverages by any Licensed Vendor, or registered or unregistered agent or upon any other sufficient cause shown, the Board may, within one year from the date of such violation or cause appearing, cite such licensed Vendor or registered agent, or both, to appear before it or its examiner not less than ten (10) nor more than fifteen (15) days from the date of sending such Licensed Vendor or registered agent, by registered mail, a notice addressed to the vendor and/or the

registered agent, at the address filed with the Board, to show cause why the license, permit and/or registration(s) should not be suspended or revoked. And, upon such hearing, if satisfied that any such violation has occurred, or for other sufficient cause, the Board may suspend or revoke such licenses, permits and/or registration(s), notifying the Licensed Vendor or registered agent by registered mail, addressed to the vendor and/or the registered agent, at the address filed with the Board. When the license, permit and/or registration(s) is revoked, the bond filed with the application for such license, permit and/or registration(s) may be forfeited and the full amount of such bond or any part thereof may be fixed as a penalty and collected by the Board. Any Licensed Vendor or registered agent whose license, permit or registration has been revoked shall be ineligible to hold any license, permit or registration under this or any other regulation of the Board or any law of this Commonwealth relating to liquor, alcohol, or malt or brewed beverages until the expiration of three (3) years from the date such license, permit or registration was revoked. The action of the Board shall be final.



# REGULATION 130 IMPORTATION OF LIQUOR ON BEHALF OF RESIDENTS OF PENNSYLVANIA IN CERTAIN CASES

(Effective June 26, 1952)

## Section 130.01. Types of Importations.—

### A. Gift Liquor

Liquor given to persons residing in Pennsylvania by non-residents thereof, may, in the discretion of the Liquor Control Board, be imported into Pennsylvania in the manner hereinafter provided in this regulation.

### B. Liquor Dividends

Liquor representing a liquor dividend to stockholders of a distillery located outside of Pennsylvania, may, in the discretion of the Liquor Control Board in the manner hereinafter provided in this regulation, be imported into Pennsylvania for stockholders of such distillery resident in this State.

### C. Liquor Allotted to Stockholders of a Distillery Under Purchase Privilege Plan

Liquor allotted to its stockholders under a purchase privilege plan, by a distillery located outside Pennsylvania, may, if such liquor is not stocked in Pennsylvania Liquor Stores, be imported into Pennsylvania, in the discretion of the Liquor Control Board and in the manner hereinafter provided in this regulation, for the distillery's stockholders resident herein.

### D. Heirs and Legatees

Liquor owned and possessed outside Pennsylvania by a resident or a non-resident decedent passing to a resident of Pennsylvania by will or intestacy, may, in the discretion of the Liquor Control Board, be imported into Pennsylvania for and in behalf of the beneficiary in the manner hereinafter provided in this regulation.

### E. Liquor Purchased Prior to January 1, 1934

Liquor purchased outside Pennsylvania prior to January 1, 1934, by residents of this State for purposes other than resale, may, in the discretion of the Liquor Control Board be imported into Pennsylvania for such residents in the manner hereinafter provided in this regulation.

### F. New Residents of Pennsylvania

Upon the establishment of residence in Pennsylvania by persons residing outside this State, liquor owned and possessed by them in their foreign residence for personal use, may, in the discretion of the Liquor Control Board, be imported into Pennsylvania for such residents in the manner hereinafter provided in this regulation.

### G. Confiscated Liquor for Hospitals

Hospitals desirous of obtaining legal possession of confiscated liquor, offered by Federal authorities or granted to them by the courts of this Commonwealth, shall make written application to the board for its official seals to be affixed to the containers not bearing such seals, and for permission to import the liquor if located outside of Pennsylvania. Written application must include the number and size of bottles and the brand of liquor, the address of the Federal Supply Service office and the federal transfer number.



**Section 130.02. Application.**—Except as otherwise provided for confiscated liquor for hospitals or for the importation of liquor allotted to stockholders of a distillery under a purchase privilege plan, every resident of Pennsylvania desiring to obtain liquor outside this State, under the provisions of this regulation, shall file with the Liquor Control Board an application, which shall set forth:

- A. Name and address of the applicant.
- B. Name and address of persons or firm from whom the liquor is to be received.
- C. Whether the liquor is a gift, a dividend, a bequest or a purchase.
- D. Description of the liquor, including the brand name, size and number of bottles.
- E. Name and address of the transporter (if the transporter is a trucking company, such transporter shall hold a valid Transporter-for-Hire license issued by the board).

The Liquor Control Board reserves the right to request any additional information it may deem necessary.

Every application involving more than 1 quart of spirituous liquor, or more than 1 gallon of wine shall be verified by oath or affirmation of the applicant. Every application shall, in the case of a gift, dividend or bequest, specifically state that the liquor was not obtained by the applicant by purchase or for a consideration of any kind and that the donee is at least 21 years of age. In the case of a purchase, the affidavit shall also set forth the date of purchase and that the liquor is not for resale.

**Section 130.03. Service Charge.**—Every applicant hereunder, except a Hospital applying under Section 130.01 G, shall at the time of filing the application, pay to the Liquor Control Board a service charge at the rate of twenty-five cents (25¢) per gallon or fraction thereof. All service charges authorized under this section shall be paid to the Liquor Control Board in cash, money order, certified or cashier's check, and shall be paid by the said board into the State Stores Fund.

**Section 130.04. Consent Certificate.**—Upon receipt of the application and the proper service charge, and upon being satisfied of the truth of the statements in the application, the Liquor Control Board will in its discretion grant and issue to the applicant a Consent Certificate permitting the importation of the liquor designated therein and entitling the applicant to obtain, in the manner hereinafter set forth, such liquor from the transporter or the authority in custody thereof.

**Section 130.05. Release of Liquor.**—Upon the arrival of the liquor in Pennsylvania for the holder of a Consent Certificate under this regulation, the Liquor Control Board will furnish him with a Notice of Release in duplicate, both copies of which shall be signed by the holder of the certificate and surrendered to the carrier for delivery of the liquor. The carrier will in turn sign the original in the space provided and forward it to the Liquor Control Board at Harrisburg. Before the Notice of Release will be furnished, the holder of the Consent Certificate must present to the Liquor Control Board a certificate from the Department of Revenue evidencing the payment of the requisite Pennsylvania Spirituous and Vinous Liquor tax upon such liquor and proof satisfactory to the Liquor Control Board of the payment of all transportation and other charges, if any, against the shipment.

The Liquor Control Board will furnish official board seals, which will be affixed to each bottle of liquor by an officer or employe of the board.

**Section 130.06. Liquor to be Shipped in Care of the Liquor Control Board.**—All shipments of liquor authorized under this regulation shall be consigned to the holder of the Consent Certificate in care of the Liquor Control Board. Any shipments consigned otherwise shall for all intents and purposes be considered in the constructive possession of the Liquor Control Board until released by the said board to the holder of the Consent Certificate.

**Section 130.07. Procedure for Importation of Liquor Allotted to Pennsylvania Stockholders Under Purchase Privilege Plan.**—Liquor allotted by a distillery located outside Pennsylvania to its stockholders under a purchase privilege plan, may, in the discretion of the Liquor Control Board, be acquired and possessed in this State by Pennsylvania stockholders of such distillery (except the holders of hotel, restaurant and club liquor licenses, who, under the law, are prohibited from being stockholders), in the following manner.

Every such Pennsylvania stockholder desiring to acquire and possess in this State liquor allotted such stockholders under a purchase privilege plan, shall fill out, sign and file with the Liquor Control Board at Harrisburg, Pennsylvania, a Special Liquor Order Form (PLCB-110) for the said liquor, designating in said order the Pennsylvania Liquor Store at which delivery of the liquor is to be made, and shall also file therewith a true and correct copy of the completed order form required under the purchase privilege plan, to be transmitted by the stockholder to the distillery or its trustee, containing, inter alia, the number of cases of liquor to be purchased and the cost price thereof to the stockholder. (Special Liquor Order Form PLCB-110 will be furnished by the Liquor Control Board upon application therefor at Harrisburg.)

Upon receipt of the Special Liquor Order and the copy of the stockholder's order to the distillery or its trustee, the Liquor Control Board if it accepts the Special Liquor Order will so notify the stockholder, and, if under the purchase privilege plan the said board cannot make the actual purchase of the liquor, permission will be given to the stockholder to do so and to authorize delivery of the liquor to the Liquor Control Board at the liquor store designated in the Special Liquor Order, provided all transportation charges are prepaid by the shipper.

Special Liquor Orders filed under authority of this regulation shall be subject to the Liquor Control Board's markup and any Emergency State Tax, but where the liquor is purchased by a stockholder under a purchase privilege plan the cost price of the liquor to such stockholder shall be the basis for the Board's markup. In addition to the Liquor Control Board's markup and any Emergency State Tax, the stockholder shall be required to pay all taxes (except the Pennsylvania Spirituous and Vinous Liquor Tax), expenses and charges, if any, due upon delivery of the liquor to the board, and the cost of board seals to be attached to each bottle of liquor at the rate of twenty-five cents (25¢) per case.

If, as, and when the liquor is delivered to the board, the stockholders will be notified of its arrival and requested to pay all taxes, charges and expenses, if any, due on such liquor or its shipment. Unless the stockholder makes full payment thereof and accepts delivery of the liquor within five (5) days after notice of its arrival, the Liquor Control Board will, in its discretion, place such liquor in stock for general sale through its stores upon payment to the stockholder of the actual cost price of the liquor to him under the purchase privilege plan.

The Liquor Control Board will not be liable for non-delivery of the liquor by the distillery or its trustee, loss of or damage to the liquor in transit

through breakage, pilferage or any other cause, and the stockholder shall assume any and all risk until the liquor is actually delivered to the stockholder.

**Section 130.08. Distillery Bonded Warehouse Certificates.**—Distillery Bonded Warehouse Certificates, evidencing the ownership of liquor, are excepted from this regulation, as the sale, purchase and possession of such certificates is subject to the provisions of Article VII of the Liquor Code.

**Section 130.09. Miscellaneous Provision.**—No liquor will be imported under the provisions of this regulation except liquor in bottles properly labelled, and upon which all Federal liquor taxes have been paid. Such liquor shall be for personal use only and shall not be sold in this State except by the Liquor Control Board. All importations of liquor hereunder shall be at the risk of the applicant.

**Section 130.10. Pennsylvania Distillers and Importers.**—This regulation shall not apply to or affect in any way the rights and privileges of distillers and importers, duly licensed by the Pennsylvania Liquor Control Board, under the provisions of the Liquor Code.

# **REGULATION 131 IMPORTATION, TRANSPORTATION AND POSSESSION OF LIQUOR PURCHASED IN A FOREIGN COUNTRY**

*(Effective October 4, 1961)*

**Section 131.01. Statutory Provision.**—The Liquor Code (Act of April 12, 1951, P. L. 90) as amended by Act No. 381, approved by the Governor on July 26, 1961, permits any person to import into Pennsylvania, transport or have in his possession one gallon of liquor upon which a state tax has not been paid and the package containing the liquor does not bear the official seal of the board, if it can be shown to the satisfaction of the board that such person purchased the liquor in a foreign country and was allowed to bring it into the United States duty free.

The aforementioned amendatory act does not prescribe the nature or kind of proof to satisfy the board, as aforesaid, and therefore it is provided, as follows:

**Section 131.02. Proof Required.**—Any person who possesses or transports, in Pennsylvania, not in excess of one gallon of liquor claimed by such person to have been purchased by him in a foreign country shall, upon request of the board, submit documentary evidence, as follows:

- (1) The stub or receipt for passage on the railroad, bus, steamship or airplane, or hotel receipt, or other satisfactory evidence to prove the foreign travel.
- (2) A receipt evidencing the purchase of the liquor personally by such person while in such country.
- (3) An affidavit by such person that he was allowed to bring the liquor into the United States duty free.

**Section 131.03. Imports in Excess of One Gallon Per Person.**—If the quantity of liquor being imported is in excess of the permitted one gallon, the excess will be subject to the board's mark-up, and state taxes, calculated in the usual manner.





**REGULATION 132**

*(Rescinded August 30, 1965)*



**REGULATION 133 BREWERY LICENSES**

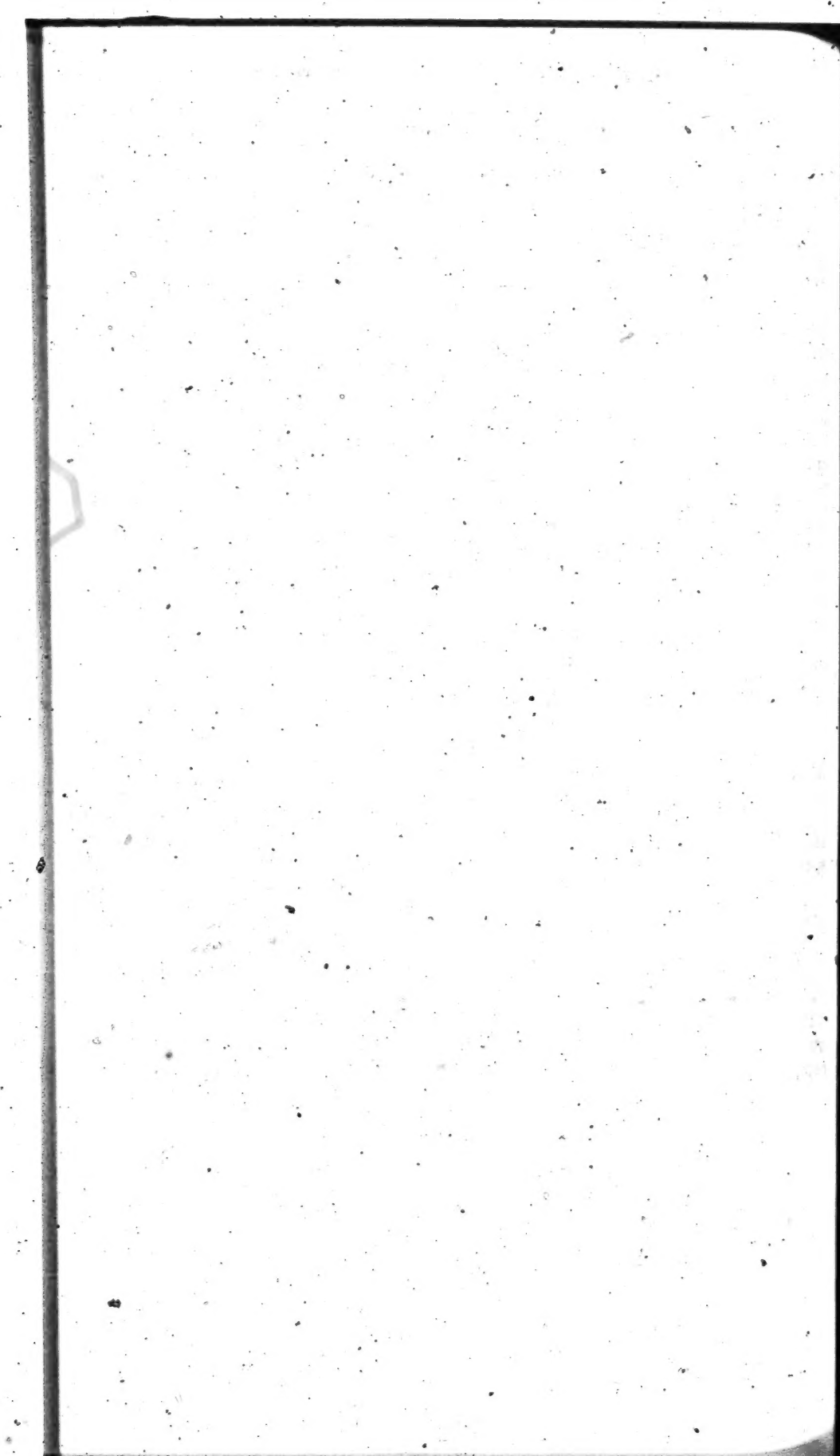
*(Effective June 26, 1952; As amended April 1, 1962 and August 29, 1966)*

**Section 133.01. Records.**—Every manufacturer of malt or brewed beverages holding a license issued by the Liquor Control Board shall maintain and keep on the licensed premises for a period of at least two (2) years daily records showing the following information:

The purchase and receipt of all raw materials used in the manufacturing of malt or brewed beverages together with the name and address of the person from whom purchased; the quantity of raw material used in the manufacturing of malt or brewed beverages together with the quantity produced from those raw materials; the withdrawal of all finished malt or brewed beverages showing the number and size of all containers; the quantity of Federal Tax paid malt or brewed beverages withdrawn for bottling together with the quantity and size of cases bottled; the quantity and size of all tax paid or non-tax paid malt or brewed beverages used for consumption on the premises; the quantity and size of all containers removed from the licensed premises either for personal consumption or other purposes together with the name and address of person for whom removal is made; sales invoices showing name, address, quantity and size of all containers, cost of malt or brewed beverages, deposits collected on all returnable containers, refunds paid or credited and net amount of invoice; a sales register showing the total quantity by size of container, the cost of malt or brewed beverages, deposits collected on all returnable containers, refunds paid or credited and net amount of cash for each day's business; a cash book showing all cash received; a disbursement record showing amount of all cash disbursements together with the name of the person to whom paid, such disbursements shall be supported by invoices or memoranda; a record of all salesmen's expenses showing cost of travel, lodging, subsistence and promotional expenses. All promotional expenses must be broken down to show place and amount expended.

Federal reports showing any of the aforementioned information will be satisfactory record. Such Federal reports will be subject to the same inspection and control as any other records required by the board.

**Section 133.02** *(As amended April 1, 1962 and August 29, 1966)*  
**Monthly Reports.**—All manufacturers of malt or brewed beverages licensed by the board shall file with the board each month, reports on Forms RCB-47, RCB-48 and RCB-49. Such report shall be signed and sworn to by the licensee or his duly authorized agent and shall be filed with the board on or before the fifteenth day of the month immediately succeeding the month for which the report is prepared. A copy of each report shall be retained by the licensee for a period of two (2) years.



## **REGULATION 134 BONDED WAREHOUSE LICENSES**

*(Effective June 26, 1952)*

**Section 134.01. Storage.**—The holder of a Bonded Warehouse License may receive and store "In Bond" (A) Alcohol or liquor legally manufactured in Pennsylvania; (B) Liquor legally imported into Pennsylvania by Pennsylvania Licensed Importers; (C) Alcohol legally imported into Pennsylvania by the holder of an "AB Permit" issued by the Pennsylvania Liquor Control Board.

Where alcohol or liquor is to be received for deposit "In Bond" from a distillery not on the same or contiguous premises, or from another Internal Revenue Bonded Warehouse, approval of transfer must be obtained from the Pennsylvania Liquor Control Board on forms furnished by the board.

Where alcohol and liquor is to be received for deposit "In Bond" from a distillery on the same or contiguous premises, no approval from the Pennsylvania Liquor Control Board is necessary.

**Section 134.02. Records.**—Daily records shall be maintained on the licensed premises for a period of two (2) years. Such records shall show:

### **A. Receipts**

The name of producer and location of Distillery where produced; name and address of bonded warehouse from which transferred; name and address of the owner for whom stored; type, whether alcohol, whiskey, etc.; type and number of containers; quantity in proof gallons (tax gallons); and, warehouse certificates issued; must be included.

### **B. Shipments**

The name and address of person to whom shipped; type, whether alcohol, whiskey, etc.; type and number of containers; quantity in proof gallons (tax gallons); name and address of person from whose inventory the alcohol or liquors were withdrawn; and, warehouse certificate numbers cancelled; must be included.

Withdrawals In Bond shall show the original proof gallons (tax gallons). Tax Paid withdrawals shall show the regauged proof gallons (tax gallons) and losses in regauging.

### **C. Transfer of Ownership of Warehouse Certificates**

When the alcohol or liquors are not removed from the Bonded Warehouse any transfer of ownership of warehouse certificates shall be recorded showing the name of person from whom transferred, the name and address of the person to whom transferred, together with the type of alcohol or liquor, type and number of containers and proof gallons (tax gallons), the warehouse certificate cancelled and the warehouse certificate issued to the new owner.

**Section 134.03. Reports.**—All Bonded Warehouse Licensees shall, on or before the 15th day of each month, file with the Pennsylvania Liquor Control Board, monthly reports together with necessary supporting schedules, covering the operations of their licensed business during the preceding month. Such reports shall be on forms provided by the board. A copy of each such report shall be retained on the licensed premises for a period of two (2) years.





# REGULATION 135 SALES OF LIQUOR TO NON-BEVERAGE MANUFACTURERS. (OTHER THAN MANUFACTURING PHARMACISTS)

(Effective October 10, 1952)

**Section 135.01. Requirement for Liquor.**—Chemists and manufacturing pharmacists may obtain their liquor requirements under the provisions of Regulation 128.

Persons who manufacture any product wherein liquor (distilled spirits and wine) is used and changed into other chemical substances and does not appear in the finished product as liquor, may obtain necessary liquor for such use in the following manner:

- A. Purchases at State Stores from stock merchandise or on special liquor order. (No permit needed.)
- B. Purchases under authority of a Bulk Purchase Permit in quantities of fifty (50) gallons or more in containers of one gallon or larger capacity, except where operating conditions do not permit supplying such sizes.

**Section 135.02. Application and Permit.**—Application for a Bulk Purchase Permit shall be made by and in the name of the owner, if a natural person; by an authorized partner, if a partnership; or, by a principal officer, if a corporation. Every application shall be accompanied by a permit fee of \$5.00 and shall set forth:

- A. The name under which the applicant's business is operated.
- B. The address, including street and number, of the applicant's principal place of business in this Commonwealth.
- C. The name and description of each product or process in which liquor is used.
- D. The name, type and quantity of liquor customarily and actually used in each product or process.
- E. Such other information as the board may require.

Every application shall be verified by oath or affirmation of the applicant that the information therein is true and correct, and that the liquors set forth in the application will be used solely for the listed purposes.

Upon receipt of the application in proper form the board will, in its discretion, issue a Bulk Purchase Permit, authorizing the purchase of the required type or types of liquor. All permits shall expire December 31 of the year in which issued and may be renewed upon the filing not later than December 1 of an application for renewal accompanied by the prescribed permit fee of \$5.00.

**Section 135.03. Bulk Purchases.**—Bulk purchases will be allowed under this regulation only in quantities of fifty (50) gallons or more per order consisting of not less than twelve (12) gallons per type, in containers of one gallon or larger capacity. Where operating conditions do not permit supplying such sizes, the board may, upon receipt of a written application setting forth satisfactory reasons, permit the use of smaller sizes. The board will not approve applications for sizes smaller than a gallon if the same brands are

listed for sale in State Stores. Permittees shall place their orders with the Bureau of Purchases of the board at Harrisburg. Each order shall set forth:

- A. Name and address of the purchaser.
- B. Name and address of the person or firm to whom the order is directed.
- C. Brand name and/or description of the liquor desired.
- D. Manner in which the liquor is to be packed (size and number of containers).
- E. Manner in which the liquor is to be shipped, including name of carrier. (If the carrier is a trucking company, such carrier must hold a valid transporter-for-hire license issued by this board).
- F. Destination to which shipment is to be made.

Every order shall be accompanied by a remittance in the amount of \$2.00. The board will not be liable to any vendor for the purchase price of liquor purchased hereunder nor for any transportation charges or claims in connection therewith.

Upon approval by the board of an order from a permittee the order will be forwarded to the specified vendor who will be notified to make shipments to the Pennsylvania Liquor Control Board at the destination given in the order. The board will furnish such vendor with seals which shall be affixed to each container of the shipment to identify such container as a legal purchase in Pennsylvania.

The board will also furnish the purchaser with a Notice of Release in duplicate, both copies of which shall be signed by the purchaser and surrendered to the carrier upon delivery of the liquor. The carrier will sign the original in the space provided and forward it to the board in Harrisburg, retaining the other copy for his file.

**Section 135.04. Use of Liquor.**—All liquor purchased under authority of this regulation shall be used only in the specified manufacturing process or in the manufacture of the specified product and may not be used for any other purpose whatsoever.

**Section 135.05. Records.**—Each permittee shall maintain for a period of two (2) years records showing all purchases of liquor under authority of their permit and all withdrawals. The withdrawal record shall indicate the quantity withdrawn and actually used in the particular product or process. The board reserves the right to inspect the premises of the permittee and examine the records. Such inspection may be made at any time when the establishment is open for business.

**Section 135.06. Refusal to Purchase Liquor and Revocation of Permit.**—The board may refuse to approve the purchase of liquor by any permittee or may revoke any permit issued under this regulation if it shall appear that the permittee has used any liquor purchased under this regulation for any purpose other than that set forth in his application or has violated any law of the Commonwealth or regulation of the board pertaining to alcohol, liquor or malt or brewed beverages. The action of the board in refusing approval and/or revoking a permit shall be final.

# REGULATION 136 NOTICE OF APPLICATION

(Effective January 1, 1955)

**Section 136.01. Statutory Provision.**—Section 403, sub-section (g) of the Liquor Code requires applicants for hotel, restaurant and club liquor licenses to post notice of their license application and provides: "Every applicant for a new license or for the transfer of an existing license to another premises not then licensed shall post, for a period of at least fifteen days beginning with the day the application is filed with the board, in a conspicuous place on the outside of the premises for which the license is applied, a notice of such application, in such form, of such size, and containing such provisions as the board may require by its regulations. Proof of the posting of such notice shall be filed with the board."

Section 432, sub-section (e) of the Liquor Code requires applicants for hotel, eating place and club malt and brewed beverage retail dispenser licenses to post notice of their license application and provides: "Every applicant for a new or for the transfer of an existing license to another premises not then licensed shall post, for a period of at least fifteen days beginning with the day the application is filed with the board, in a conspicuous place on the outside of the premises or in a window plainly visible from the outside of the premises for which the license is applied, a notice of such application, in such form, of such size, and containing such provisions as the board may require by its regulations. Proof of the posting of such notice shall be filed with the board."

Pursuant to and in accordance with the above quoted statutory provisions, the following regulation is adopted, effective January 1, 1955.

**Section 136.02. Forms.**—Form W-112, "Notice of Application for Retail Liquor License" shall be approximately 11 inches by 17 inches in size and shall contain the following text: "Notice of Application for Retail Liquor License. Date Posted. *To Whom It May Concern:* The undersigned, proprietor of this establishment, hereby gives notice that he has on this date filed, with the PENNSYLVANIA LIQUOR CONTROL BOARD, Harrisburg, an application for a Retail LIQUOR LICENSE for these premises. Name: (Typed or Printed) Name: (Signed)

This 'Notice of Application' shall be continuously posted during the period the application is pending, in a conspicuous place on the outside of the premises for which the license is applied, in such a place and in such a manner that it is easily and readily visible to the general public at all times. Posted in accordance with the provisions of the Liquor Code, approved April 12, 1951, P. L. 90, and the Regulations of the Pennsylvania Liquor Control Board. Removing, defacing, covering up or destroying this 'Notice of Application' by anyone during the period the application is pending is a **CRIMINAL OFFENSE** and will be prosecuted according to Law."

Form W-113, "Notice of Application for Malt and Brewed Beverage Retail Dispenser License" shall be approximately 11 inches by 17 inches in size and shall contain the following text: "Notice of Application for Malt and Brewed Beverage Retail Dispenser License. Date Posted. *To Whom It May Concern:* The undersigned, proprietor of this establishment, hereby gives notice that he has on this date filed, with the PENNSYLVANIA LIQUOR CONTROL BOARD, Harrisburg, an application for a MALT AND BREWED BEVERAGE RETAIL DISPENSER LICENSE for these premises. Name: (Typed or Printed) Name: (Signed)

This 'Notice of Application' shall be continuously posted

during the period the application is pending, in a conspicuous place on the outside of the premises or in a window plainly visible from the outside of the premises for which the license is applied, in such a place and in such a manner that it is easily and readily visible to the general public at all times. Posted in accordance with the provisions of the Liquor Code, approved April 12, 1951, P. L. 90, and the Regulations of the Pennsylvania Liquor Control Board. Removing, defacing, covering up or destroying this 'Notice of Application' by anyone during the period the application is pending is a **CRIMINAL OFFENSE** and will be prosecuted according to Law."

These forms are furnished by the board and are available upon request at any of the board's District Enforcement Offices or at the board's offices in Harrisburg. No other form will be acceptable or considered to be in compliance with this regulation.

**Section 136.03. Applicant's Responsibility.**—A. The "Notice of Application" must remain posted from the date the application is filed until the license or notice of refusal is received by the licensee or applicant.

B. The applicant shall be fully responsible for the posting and maintenance of the "Notice of Application," at all times during the period the application is pending:

C. If, upon the original or any subsequent investigation of the applicant and the premises made in connection with the current application, it is disclosed that the "Notice of Application" is not posted as provided herein, it shall be considered sufficient cause to refuse to grant the license applied for, and for prosecution.

D. If it is ascertained after a license has been granted that the "Notice of Application" was removed before the license was received, it shall be considered sufficient reason for the issuance of a citation to show cause why the license should not be revoked, and for prosecution.

**Section 136.04. Affidavits.**—In addition to the affidavit in the application in which the applicant swears or affirms that the "Notice of Application" was posted as prescribed on the date of filing of the application, the applicant shall furnish to the board, upon request, another affidavit attesting to the fact that the "Notice of Application" was continuously and conspicuously posted as provided herein, from the date the application was filed to the date of making the second affidavit. The second affidavit will not be requested until at least fifteen (15) days subsequent to the filing of the application.



# REGULATION 137 MALT OR BREWED BEVERAGE ORIGINAL CONTAINERS

(Effective December 9, 1954; as amended July 30, 1965, and May 1, 1966)

Section 137.01 (As amended July 30, 1965, and May 1, 1966) Nature, Form and Capacity of All Packages and Original Containers To Be Used For Containing Malt or Brewed Beverages.—Section 207(g) of the Liquor Code provides: "Under this act, the board shall have the power and its duty shall be: To determine the nature, form and capacity of all packages and original containers to be used for containing liquor, alcohol or malt or brewed beverages."

In conformity with the foregoing statutory provision, the board by this regulation fixes the nature, form and capacity of all original containers for containing malt or brewed beverages as defined in the Liquor Code and that may be lawfully sold for use and consumption in the Commonwealth of Pennsylvania, regardless of the place of manufacture, as follows:

## BOTTLES, CANS, KEGS AND BARRELS

Seven (7) fluid ounces	
Eight (8) fluid ounces	
Twelve (12) fluid ounces	
Sixteen (16) fluid ounces	
Thirty-two (32) fluid ounces	
One hundred twenty-eight (128) fluid ounces	
One hundred forty-four (144) fluid ounces	
Two hundred eighty-eight (288) fluid ounces	
Three and seven-eighths ( $3\frac{7}{8}$ ) gal.	$\frac{1}{8}$ Bbl.
Five and one-sixth ( $5\frac{1}{6}$ ) gal.	$\frac{1}{6}$ Bbl.
Seven and three-fourth ( $7\frac{3}{4}$ ) gal.	$\frac{1}{4}$ Bbl.
Ten and eight-tenth ( $10\frac{8}{10}$ ) gal.	Approx. $\frac{1}{3}$ Bbl.
Fifteen and one-half ( $15\frac{1}{2}$ ) gal.	$\frac{1}{2}$ Bbl.
Thirty-one (31) gal.	1 Bbl.

The customary tolerances permitted by Federal Regulations shall apply to all the aforementioned original containers.



## REGULATION 138 RULES OF PRACTICE

(Effective July 1, 1959; as amended November 22, 1961)

**Section 138.01. Definitions.**—As used in these rules, the following terms will have the indicated meaning:

- A. "Applicant" shall mean one who requests the issuance of a license or permit from the Pennsylvania Liquor Control Board.
- B. "Board" shall mean the Pennsylvania Liquor Control Board of this Commonwealth.
- C. "Examiner" shall mean an individual learned in the law appointed by the Governor pursuant to the provisions of the Act of April 12, 1951, P. L. 90, Section 402, as amended.
- D. "Licensee" shall mean any person holding a current license or permit issued by the board.
- E. "Person" shall mean an individual, a partnership, an association or a corporate entity.
- F. "Protestant" shall mean a person objecting on grounds of private or public interest to the prayer of an application.

**Section 138.02. Appearances, Attorneys.**—

- A. All parties except individuals appearing in their own behalf shall be represented by attorneys-at-law in good standing.
- B. All attorneys appearing before the board shall conform to the standards of ethical conduct required of practitioners before the Supreme Court of Pennsylvania and failure so to conform will constitute ground for refusal of permission to appear before the board.

**Section 138.03. Continuances.**—

- A. All requests for continuances of any cause, except as provided in subsection G hereof, shall be in writing and addressed to the Pennsylvania Liquor Control Board, Northwest Office Building, Harrisburg, Attention: Legal Bureau.
- B. No cause shall be continued more than once because of the absence of counsel performing the duties of state or national office.
- C. The party moving for continuance of the cause shall, if required by the board, submit an affidavit containing the facts alleged as the reason for the motion. Such affidavit shall specifically, and with particularity, set forth the names and addresses of all parties concerned, the caption and number and term of any cause which may be the basis of such motion, and such other information that the board may from time to time request.
- D. When application is made for continuance of a cause prior to the date set for hearing thereon because of the absence of a witness, an affidavit must be presented setting forth the fact or facts which it is believed the witness will prove, the efforts made to procure the attendance of such witness, the affiant's belief in such facts and his reasons for such belief, and that a continuance will enable the party to procure the presence or testimony of the witness. Such application shall specifically identify such witness by name and last known address.

- E. When application is made for continuance of a cause because of the illness of an applicant, licensee, witness or counsel, such application shall be accompanied by a medical certificate attesting to such illness and inability to testify.
- F. Except as hereinafter provided, no continuance of any board hearing will be approved unless a written request for such continuance is received by the board in Harrisburg at least 48 hours prior to the time fixed for hearing.

Request for continuance received by the board within the 48 hour period will not be granted unless satisfactory arrangement in writing is made with the board for the payment of all expenses resulting from such continuance. However, the board may waive payment of such expenses in case of extenuating circumstances in any matter of continuance.

- G. The right of an Examiner to grant a motion for continuance of any hearing shall be confined to motions made at the time and place set for hearing, and which shall have been verbally approved by the Legal Bureau of the board. Said motion shall be based upon the alleged inability of a material party, witness or counsel to appear for reasons of illness or other cause, which inability shall have come to the attention of the moving party within the 24-hour period immediately preceding the time set for hearing. Such motion shall include: (1) the name and address of the unavailable material party, witness or counsel; (2) a brief statement of the service or testimony to be offered by said party, witness or counsel; (3) the reason for such inability to be present; (4) in the case of illness, a medical certificate (if possible) attesting to such illness and inability to appear; and (5) the willingness of the moving party to bear the expense of increased witness fees and mileage occasioned by the request. All other motions for continuance shall be referred to the board for determination.

**Section 138.04. Subpoenas.**—In all proceedings the board will, upon request of any party of record, issue subpoenas to compel the presence of witnesses at hearings. Such subpoenas will be available at each District Office of the board.

Subpoenas duces tecum may be issued by the board upon written petition to it, received by it in Harrisburg no less than five (5) days prior to the date fixed for hearing. Each petition shall clearly set forth the books, papers and records desired, the necessity therefor, and the party against whom the subpoena should issue. Such subpoena duces tecum form, if provided by the board, shall be completed by the applicant therefor and shall demand only such books, papers and records as set forth in the petition therefor.

The board shall not be responsible for witness fees and/or mileage for any witness unless such witness shall have been subpoenaed by and for the board.

**Section 138.05. Bills of Particulars.**—No Bill of Particulars shall be granted or furnished by the board in any matter, hearing or controversy pending before it.

**Section 138.06. Hearings.**—

- A. Preliminary Statements.—At any initial hearing all persons entering an appearance shall state for the record (before any testimony shall be received) their names, addresses, and for whom they appear.
- B. The Examiner may require or allow a factual statement of the position of any party in the case.

- C. All citations and all board orders in a case shall constitute a part of the record without formal offer.
- D. The customary rules of evidence shall be enforced but shall be liberally construed and applied.
- E. Not more than one counsel shall ask a question of any one witness, either in chief or on cross-examination, or in any way interfere in the same, except to suggest questions to a colleague.
- F. If, at the time and place scheduled for hearing, all parties to the record are not in attendance either in person or by counsel, the matter shall be heard ex parte.
- G. In hearings upon applications for the issuance of licenses the order in which testimony shall be taken shall be as follows: (1) Board witnesses; (2) Protestants; (3) Applicants.

**Section 138.07. Waivers, Admissions and Authorizations.—**

- A. A licensee whose license shall have been cited to show cause why it should not be suspended or revoked may waive the hearing fixed thereon. Such waiver shall constitute an admission of the charges contained in the citation and an authorization to the board to enter without hearing such final order or decree as it shall deem appropriate.
- B. All waivers by corporate licensees or unincorporated association licensees shall be accompanied by a resolution under the seal of the corporation or association authorizing the submission of such waiver.
- C. Such waivers shall be in a form prescribed by the board. Forms therefor shall be available at all District Offices of the board.

**Section 138.08. Further Hearing, Rehearing, Recision or Modification of Orders.—**

- A. Any petition for further hearing, for reopening, or for rehearing, recision, reconsideration or modification of a board order, shall be in writing, setting forth in numbered paragraphs the findings or orders of the board that may be involved, the points relied upon by the petitioner, with appropriate record references and specific requests for the findings or orders desired.
- B. If the petition be for further hearing or for reopening the proceeding to take further evidence, the nature and purpose of the evidence to be adduced must be briefly stated.

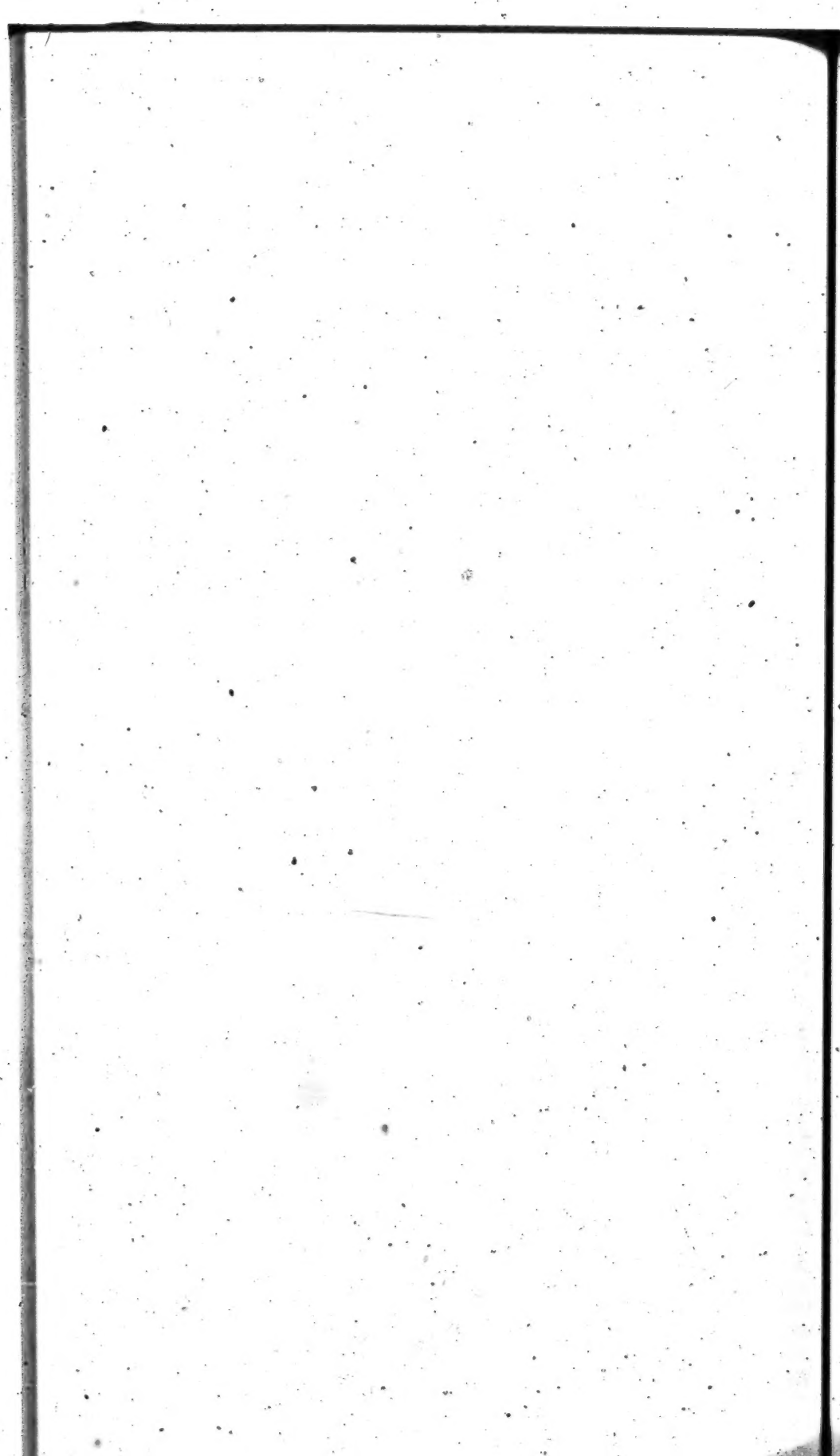
**Section 138.09. (As amended November 22, 1961) Testimony.—**Upon completion of any hearing, any party of record may request a transcript of the testimony therein and shall be furnished such transcript upon payment at the rate of fifty cents (\$.50) per page.

Partial transcripts or transcripts of uncompleted hearings will be furnished only for cause shown, upon petition to the board. The furnishing of such transcript shall be discretionary with the board.

**Section 138.10. Waiver of Rules.—**The board shall have the right in its sole discretion to waive any of the rules herein contained.

**Section 138.11. Severability.—**The sections of this regulation shall be deemed severable. Should any such section be deemed by judicial opinion or legislative enactment to be invalid, unconstitutional or in any manner contrary to the laws of the Commonwealth, such opinion or enactment shall invalidate only the particular section of the regulation and all other sections shall remain in full force and effect.





## REGULATION 139 IDENTIFICATION CARDS

(Effective October 21, 1961; as amended July 31, 1963 and April 17, 1970)

Section 139.01 (As amended April 17, 1970) Statutory Provisions. The Liquor Code in Section 495, as amended by Act No. 456, approved August 21, 1961, provides, inter alia:

"The Board shall issue, to any person who shall have attained the age of twenty-one years an identification card bearing said person's date of birth, physical description, photograph, signature and such other information as the Board by regulation may determine attesting to the age of the applicant, upon application therefor by said person filed no earlier than fifteen days prior to attaining the age of twenty-one. Such cards shall be numbered and a permanent record thereof maintained by the Board. The Board may in its discretion impose a charge for such cards in an amount to be determined by it and it may upon proof of loss of such identification card by and upon application of anyone to whom such card may have been issued issue a duplicate thereof and impose a charge therefor in an amount as it may by regulation prescribe. The Board shall have the power to make such regulations as it shall from time to time deem proper regarding the size, style and additional content of the identification card, the form and content of any application therefor, the type, style and quantity of proof required to verify the applicant's age, the procedure for receiving and processing such application, the distribution of said card, the charge to be imposed for any card more than one that it shall issue to the same applicant and all other matters the Board shall deem necessary or advisable for the purpose of carrying into effect the provisions of this section."

Section 139.02 (As amended April 17, 1970) Application for Identification Card. Every applicant for an identification card shall file a written application therefor in duplicate at a state store or at the central office of the Board at Harrisburg on a form provided by the Board. The applicant shall submit with the application documentary proof that he is twenty-one years of age or over or that he will become twenty-one years of age within fifteen days from the date of application and such proof shall consist of three or more of the following documents: (1) Armed Forces Identification Card; (2) Passport or Foreign Government visa; (3) Selective Service Registration Certificate; (4) Armed Forces Discharge or Separation Papers; (5) Motor Vehicle Operator's License with birth date imprinted; (6) Voter's Registration Card; (7) Life Insurance Policy with photostatic copy of application therefor; (8) Birth Certificate; (9) Baptismal Certificate; (10) School or Church Age Record. There shall also be submitted with the application two (2) one inch by one inch recent photographs of the applicant, full face without hat. The application shall be signed by the applicant if the designated employee of the Board is satisfied with the proof of age submitted.

The documents submitted as proof of age shall be returned to the applicant. The signed application and photographs shall be transmitted to the Bureau of Licensing, Central Office of the Board at Harrisburg, Pennsylvania, where the date of birth of the applicant will be verified, if possible, and the application fully processed.

**Section 139.03 (As amended April 17, 1970) Identification Card.** The identification card shall be wallet size, contain the name and signature of the applicant, the facsimile signature of the Chairman of the Board and the facsimile seal of the Board. Such card shall bear a serial number registered in the central office of the Board at Harrisburg, the applicant's height, weight, color of hair, color of eyes and any other identification data deemed advisable by the Board. The photograph of the applicant shall be mounted on the identification card which shall be laminated in plastic. The identification card shall then be delivered to the applicant at the place where the application was filed and the applicant shall sign a receipt therefor or, in appropriate cases, upon the applicant's request accompanied by a \$1.00 fee, the identification card shall be sent to the applicant in the Continental United States by U. S. certified mail with delivery restricted to the applicant and requiring the return receipt to be signed personally by the applicant.

**Section 139.04. Charge for Identification Card: Replacement.**—The original identification card will be issued without charge, but in the event such card is lost or destroyed, the owner thereof, upon filing another application in the same form as required under Section 139.02 hereof and upon making affidavit as to the loss or destruction of the original identification card, may secure a duplicate card from the board at Harrisburg, Pennsylvania, upon payment of a charge of two dollars (\$2.00).

**Section 139.05. Records to be Maintained.**—The board shall maintain at its Central Office in Harrisburg, a permanent record of all identification cards issued by it, together with original application therefor and one of the applicant's photographs transmitted to the board.

Every Pennsylvania Liquor Store at which an application for an identification card is made and processed as herein required, shall retain and keep on file therein the duplicate application.

## **REGULATION 140 DEPOSIT AND TRANSMISSION OF PENNSYLVANIA LIQUOR STORE RECEIPTS**

*(Effective October 21, 1960)*

**Section 140.01. Statutory Provision.**—The Liquor Code in Section 802 provides, *inter alia*:

“All moneys, except fees to be paid into the Liquor License Fund as provided by the preceding section, collected, received or recovered under the provisions of this act for . . . sales of liquor and alcohol at the Pennsylvania Liquor Stores, shall be paid into the State Treasury through the Department of Revenue into a special fund to be known as ‘The State Stores Fund’.”

The foregoing quoted provision of the Liquor Code does not establish any procedure for the temporary custody and transmission of the moneys collected or received for sales at the Pennsylvania Liquor Stores and therefore the Pennsylvania Liquor Control Board (hereinafter called “Board”) has adopted this regulation, establishing such procedure, as follows:

**Section 140.02. Selection of Banks.**—The Board, when and as deemed advisable, will select banks located in municipalities in this Commonwealth, wherein will be deposited temporarily for account of the Commonwealth and transmittal to the State Treasury; the daily receipts of cash (currency only) at Pennsylvania Liquor Stores (hereinafter called “State Stores”). The banks, so selected, shall be only those designated depositories for State moneys by the Board of Finance and Revenue, and shall be conveniently located to the respective State Stores.

**Section 140.03. Notice of Banks Selected.**—Prior to any transaction with any of the banks selected as aforementioned, the Board will inform the Department of the Auditor General and the State Treasury Department of the name and address of each bank and the nature of the funds to be deposited therein.

**Section 140.04. Forms.**—The Board will furnish each of the State Stores a supply of uniform deposit slips and uniform transmittal checks. The deposit slips shall have imprinted thereon, *inter alia*, the name and location of the particular bank wherein the deposit is made; the name Pennsylvania Liquor Control Board for account of the Commonwealth of Pennsylvania (the depositor), and the State Store number and location. The deposit slip shall have thereon a space for entering the items of cash deposited, the total deposit and for certification of the deposit by the bank.

The transmittal checks shall have imprinted thereon the name and location of the particular bank wherein the deposit is made; the State Store number and location; Commonwealth of Pennsylvania (the payee); Commonwealth of Pennsylvania (the drawer), and thereunder the facsimile signature of the State Treasurer. In addition, the said check shall have imprinted thereon a notation as follows:

“This check shall be void unless used solely to transmit funds in the bank named hereon to Pennsylvania State Treasury for account of State Stores Fund, and bears the facsimile signature of the State Treasurer.”

**Section 140.05. Duties of State Store Manager.**—If and when final arrangements have been made for a State Store to begin operation under the procedure herein set forth, the manager of such Store shall, with respect to each day's business therein:

(a) Prepare the herein required deposit slip for the amount of cash (currency) to be deposited in the selected and approved bank for transmittal to the Central Office of the Board at Harrisburg, Pennsylvania; make the deposit and have the bank teller certify on the deposit slip that the deposit has been received by the bank.

(b) Prepare the herein required transmittal check by entering thereon the date and exact amount of the deposit.

(c) Attach the transmittal check and copy of the deposit slip, showing the same amount for which the check is drawn, to the daily report of sales at State Stores and mail the same to the Central Office of the Board at Harrisburg.

**Section 140.06. Interpretation of Regulation.**—The purpose of this regulation is to establish a new procedure now under consideration by the Board, for the protection and transmittal of moneys (currency) collected or received at Stores established, operated and maintained by the Pennsylvania Liquor Control Board, and known as "Pennsylvania Liquor Stores".

Under the provisions of this regulation, it shall be the duty and responsibility of the managers of the respective State Stores to make deposits of Store receipts and transmit the exact amount of such deposits by check in the manner herein set forth.

**Section 140.07. Effective Date.**—This regulation shall become effective on October 21, 1960, but the established procedure presently in effect for the deposit and transmittal of State Store receipts may continue until the new procedure herein set forth is fully established and operative.



## **REGULATION 141 SALE OF ALCOHOLIC BEVERAGES ON SUNDAY IN CITIES OF THE FIRST AND SECOND CLASS**

*(Effective June 2, 1961; as amended April 1, 1962)*

**Section 141.01. Statutory Provisions.**—The Liquor Code in Section 406 as amended by Act No. 781, approved January 7, 1960 (P. L. 2106) and Act No. 18, approved February 21, 1961, authorizes the sale of liquor and malt or brewed beverages on Sundays between the hours of one o'clock post meridian and ten o'clock post meridian by hotel liquor licensees and restaurant liquor licensees located in hotels in cities of the first and second class, and provides, inter alia:

"The provisions of this section shall be applicable only to those hotels whose sales of food and nonalcoholic beverages are equal to fifty-five per centum or more of the combined gross sales of both food and alcoholic beverages."

Section 406, supra, does not fix any definite period of time to be used in determining the fifty-five per centum of sales and does not set forth any procedure by the board for authorizing such sales of alcoholic beverages on Sunday. The said section does specifically grant the power to the board to make such rules and regulations as it deems necessary to insure compliance with and enforcement of its provisions. Therefore, the board adopts this regulation as follows:

**Section 141.02. Application for "Sunday Sales Permit."**—Any hotel liquor licensee or restaurant liquor licensee whose licensed premises are in a hotel of any city of the first or second class where in such city the sale of alcoholic beverages on Sunday has been approved by referendum and who wishes to make such sales of alcoholic beverages shall file an application in such form as may be prescribed by the board for a "Sunday Sales Permit." Such application shall contain or have attached thereto the following information and statements:

- (a) The name and address of the applicant.
- (b) The address of the licensed premises.
- (c) The number assigned to the hotel or restaurant liquor license held by the applicant.
- (d) A certification by a certified public accountant that for a period of not less than ninety (90) consecutive days during the twelve months immediately preceding the date of the application, sales of food and nonalcoholic beverages by the applicant at the licensed premises were equal to or exceeded fifty-five per centum of the combined gross sale of both food and alcoholic beverages. The form of such certification shall be such as the board may from time to time determine.
- (e) The application must be verified by affidavit of the applicant.

**Section 141.03. Issuance of Permit.**—Upon being satisfied of the truth of the statements in the application and certification, the board shall grant and issue a "Sunday Sales Permit." Such permit shall be in the size and form prescribed by the board and shall be posted in a conspicuous place adjacent to the license.

**Section 141.04. Provisional Permits.**—All "Sunday Sales Permits" shall be deemed personal and not subject to transfer. However, the board shall issue a "Provisional Sunday Sales Permit" to any person to whom a hotel liquor license or a restaurant liquor license in a hotel may be transferred by a person who, at the time of such transfer, is the holder of a "Sunday Sales Permit." Such "Provisional Sunday Sales Permit" shall be valid for a period of 120 days from the date of approval of the said transfer. After ninety (90) days from the date of approval of said transfer, the transferee shall have the right to file an application for a "Sunday Sales Permit" in the manner and method described in Section 141.02 hereof.

**Section 141.05. (As amended April 1, 1962). Duration of Permit.**—All such "Sunday Sales Permits" as may be issued by the board shall be valid only for the license year during which issued.

**Section 141.06. (As added April 1, 1962)—Renewals of "Sunday Sales Permits"** shall be accomplished in the same manner as set forth in Section 141.02 hereof except that the certification required by subsection (d) thereof shall be, for the preceding license year or portion thereof during which a "Sunday Sales Permit" was held by the applicant for renewal.

## REGULATION 142 REPORTING OF DISHONORED INSTRUMENTS

(Effective June 22, 1961; as amended July 17, 1963)

**Section 142.01.** (*As amended July 17, 1963*)—Any person licensed by the Pennsylvania Liquor Control Board under the provisions of Article IV of the Liquor Code who shall receive in payment for malt or brewed beverages sold by him any check, draft or similar order, for the payment of money which is subsequently dishonored by the bank, banking institution, trust company or other depository upon which drawn, for any reason whatsoever, shall within twenty (20) days of receipt of notice of such dishonor notify the Pennsylvania Liquor Control Board thereof by letter sent by United States mail and addressed: Bureau of Enforcement, Pennsylvania Liquor Control Board, Harrisburg, Pennsylvania, ATTENTION: Chief of Enforcement Examining. Such separate letter or notice for each dishonored instrument shall be submitted and shall contain information listed in the following manner:

- a. Date of instrument
- b. Institution upon which drawn
- c. Maker of instrument, trade name and address of licensed business
- d. Amount of instrument
- e. Payee of instrument (to whom payable)
- f. Date received by reporting licensee in payment for malt or brewed beverages
- g. Date of notice of non-payment or dishonor
- h. List of endorsements, if any
- i. Reason for return and other remarks

Such notice shall specifically identify the reporting licensee together with the address of his licensed premises.

**Section 142.02.** (*As added July 17, 1963*)—Any person licensed by the Pennsylvania Liquor Control Board under the provisions of Article IV of the Liquor Code who shall receive in payment for malt or brewed beverages sold by him any check, draft or similar order for the payment of money which is subsequently dishonored by the bank, banking institution, trust company or other depository upon which drawn, for any reason whatsoever, shall, within five (5) days of receipt of notice of such dishonor, notify by certified mail the person who presented the said worthless check, draft or similar order.

**Section 142.03.** (*As added July 17, 1963*)—Any person licensed by the Pennsylvania Liquor Control Board under the provisions of Article IV of the Liquor Code who shall receive in payment for malt or brewed beverages sold by him any check, draft, or similar order for the payment of money shall give instructions in writing to the banking institution or other depositories in which he shall deposit any such instruments that such banking institution or other depositories shall give notice to him forthwith when any such instrument has been dishonored by the banking institution or depository upon which it was drawn.

A copy of each notice required in Sections 142.01, 142.02 and 142.03 shall be maintained on the licensed premises.



**REGULATION 143. PROHIBITION AGAINST  
SOLICITATION FOR THE PURCHASE OF  
ALCOHOLIC BEVERAGES**

*(Effective December 19, 1961; as amended January 10, 1962)*

Section 143.01, *(As amended January 10, 1962.)*—No licensee nor servant, agent or employe thereof shall at any time permit any person on the licensed premises to solicit or entice any other person for the purpose of the purchase for them or for any other person of any food, beverages, merchandise, service, or any other item or thing stored, possessed, served, sold, exposed for sale or dispensed on the licensed premises or any premises contiguous or adjacent thereto or operated in connection therewith.





**REGULATION 144**

*(Rescinded November 23, 1965)*



**REGULATION 145 FINGERPRINTING OF CERTAIN  
PERSONS CONNECTED WITH APPLICANTS FOR  
LICENSE**

*(Effective October 11, 1965)*

**Section 145.01.**—All new applicants for a license, all new applicants for a transfer of an existing license from another licensee, all officers and directors of a corporation which desires to obtain a license, all persons who desire to become officers or directors of licensed corporations and all persons who desire to be managers of licensed establishments are required to furnish their fingerprints to the Board. Persons who acquire shares of stock in a licensed corporation will also be required to furnish their fingerprints when requested by the Board.

**Section 145.02.**—Fingerprints required by this regulation will be taken by or in the presence of Board enforcement officers.

**Section 145.03.**—Failure to comply with the provisions of this regulation shall be sufficient cause for refusal to grant, transfer or renew a license or for the issuance of a citation to show cause why a license should not be suspended or revoked.





## **REGULATION 146 NOTICE OF SUSPENSION**

*(Effective October 11, 1965)*

**Section 146.01. Posting.**—Whenever the Board shall suspend the license of any licensee, the Board will, on the date the suspension becomes effective, cause to be posted in a conspicuous place on the outside of the licensed premises or in a window plainly visible from the outside of the licensed premises, a notice of such suspension, in such form, of such size, and containing such provisions as the Board may require. Said notice shall remain posted during the entire period of suspension.

**Section 146.02. Other Closing Notices.**—During the suspension period, no licensee, or his servants, agents or employes, shall cause to be advertised in any manner, or place in, on, or about the premises, any notice of any kind, stating or indicating that the licensed establishment has been closed for any reason other than the suspension of the license.

**Section 146.03. Removal of Notice.**—No licensee, or his servants, agents or employes, shall cover, remove, alter, deface, or in any way disturb said notice, or permit the same to be done, until after the suspension period has expired. The suspension notice may not be removed until the license has been returned to the licensee or until the licensee has received notice from the Board that the suspension period has terminated.

**Section 146.04. Penalty.**—Any violation of this regulation shall be sufficient cause for the issuance of a citation to show cause why such license should not be suspended or revoked.

REGULATION OF THE STATE OF TEXAS

Section 1. The State of Texas, in order to promote the health and safety of its citizens, and to protect the public interest, do hereby enact and declare that...

Section 2. The State of Texas, in order to promote the health and safety of its citizens, and to protect the public interest, do hereby enact and declare that...

Section 3. The State of Texas, in order to promote the health and safety of its citizens, and to protect the public interest, do hereby enact and declare that...

Section 4. The State of Texas, in order to promote the health and safety of its citizens, and to protect the public interest, do hereby enact and declare that...

Section 5. The State of Texas, in order to promote the health and safety of its citizens, and to protect the public interest, do hereby enact and declare that...

Section 6. The State of Texas, in order to promote the health and safety of its citizens, and to protect the public interest, do hereby enact and declare that...

Section 7. The State of Texas, in order to promote the health and safety of its citizens, and to protect the public interest, do hereby enact and declare that...

Section 8. The State of Texas, in order to promote the health and safety of its citizens, and to protect the public interest, do hereby enact and declare that...

Section 9. The State of Texas, in order to promote the health and safety of its citizens, and to protect the public interest, do hereby enact and declare that...

Section 10. The State of Texas, in order to promote the health and safety of its citizens, and to protect the public interest, do hereby enact and declare that...

## REGULATION 147 LIMITED WINERIES

(Effective March 11, 1969; Amended July 25, 1969)

Section 147.01 Statutory Provision. Act 272 of 1968 amended the Liquor Code by making provision for a new type of winery license to be known as a "Limited Winery," and adding Section 505.2 to the Liquor Code which provides:

Section 505.2. Limited Wineries. Holders of a Limited Winery License may:

- (1) Produce table wines only from grapes grown in Pennsylvania in an amount not to exceed fifty thousand (50,000) gallons per year.
- (2) Sell wine produced by the limited winery on the licensed premises, under such conditions and regulations as the Board may enforce, to the Liquor Control Board, to individuals and to hotel, restaurant, club and public service liquor licensees.

Therefore, the Board adopts this regulation.

Section 147.02 Definition of Table Wine. "Table Wine" shall mean still wines containing not over fourteen per-cent (14%) of alcohol by volume, such definition to include wines commonly designated as sparkling wines.

Section 147.03 Sale. A limited winery licensee may sell table wines produced on his licensed premises in accordance with the provisions of the Liquor Code and Regulations of the Board, where applicable, subject to the following additional conditions:

- A. Table wine produced pursuant to a limited winery license may be shipped by common carrier, transporter-for-hire, or in commercial vehicles properly registered with the Board as provided in Regulation 106.
- B. There shall be no sales for on-premises consumption.
- C. All wine sold shall be in sealed containers, each container containing not less than six (6) ounces nor more than one (1) gallon.
- D. Sales may be made only between nine o'clock antemeridian and nine o'clock postmeridian daily, except on Sunday or on any day on which a general, municipal, special, or primary election is being held in the election district in which the limited winery is located.
- E. There shall be no sales of table wines on credit, provided, however, a limited winery may accept checks drawn by the purchaser on his account.

Section 147.04 Records to be Maintained. Section 512 of the Liquor Code provides in part:

"Every person holding a license issued under the provisions of this article (Article V) shall keep on the licensed premises daily permanent records which shall show, (a) the quantities of any alcohol or liquor

manufactured, produced, distilled, developed, denatured, redistilled, recovered, reused, stored in bond, stored as bailee for hire, received or used in the process of manufacture by him, and of all other materials used in manufacturing or developing any alcohol or liquor; (b) the sale or other disposition of any alcohol, liquor or malt or brewed beverage if covered by said license; (c) the quantities thereof, if any, stored in bond, stored for hire, or transported for hire by or for the licensee; and (d) the names and addresses of the purchasers or other recipients thereof.

The records designated in item (a) above shall include complete details concerning the source of all grapes used in the production of table wines.

In addition to the above prescribed records and, except as hereinafter provided, a sales invoice shall be prepared at the licensed premises for each sale. Such sales invoice shall be imprinted or affixed with the name and address of the limited winery. Sales invoices shall show the name and address of the recipient of the merchandise, date of sale, number of units, size and type of package, brand name, selling price of the table wine, and the net cost to the customer. The Pennsylvania sales tax where applicable shall be shown as a separate entry. The sale of other commodities shall not be included on any sales invoice covering the sale of table wines. One copy of each sales invoice shall be given to the recipient of the merchandise. Provided, however, the name and address of private individuals will not be required on sales invoices covering quantities of four (4) wine gallons or less; and in lieu of preparing sales invoices for such sales, these transactions may be entered individually on a counter sheet maintained in columnar form showing the information required on sales invoices other than name and address of the purchaser. This counter sheet shall be totaled daily and the total entered into the sales register noted in item (b) above.

**Section 147.05 Monthly Reports.** Every licensed limited winery shall file with the Board, each month, reports on Forms PLCB-42 and PLCB-43, with attached schedules on Forms PLCB-43-A and 43-B, covering all operations of their licensed business during the preceeding month. Such reports shall be signed and sworn to by the licensee or his duly authorized agent, and shall be filed with the Board on or before the 15th day of the month immediately succeeding the month for which the reports are prepared. A copy of each report shall be retained on the licensee's premises for a period of at least two years.

**Section 147.06 Registration of Agents.** It shall be unlawful for any limited winery licensee to employ individuals to solicit orders for wine produced by it or to promote the sale of such wines unless and until each such individual has been registered by the licensee with the Board in accordance with this regulation. Every application for registration shall be made upon forms provided by the Board and shall set forth the name and address of the limited winery licensee together with the name and home address of the agent and any additional information required.

The form shall be filed by both the limited winery licensee and the agent employed. Two photographs of the agent, exactly  $1\frac{1}{2}$ " by  $1\frac{1}{2}$ " in size, taken within thirty days, shall also be submitted therewith. Every application shall be accompanied by a remittance of \$20.00 for each agent to be registered and an approved surety bond (form to be furnished by the Board) in the penal sum of \$500.00. Said bond shall be conditioned for the faithful observance by the limited winery licensee, and the agent, of all of the laws of the Commonwealth and regulations of the Board relating to liquor, alcohol and malt or brewed beverages. No retail licensee or his agents, servants or employees may be registered as an agent under the terms hereof. The Board reserves the right to refuse to register any agent.

**Section 147.07 Identification Cards.** Upon approval of the Board of a licensee's application for registration of an agent, there shall be issued to such authorized agent an identification card containing the name and address of the licensee and the name and address and physical description of the agent. There shall also be affixed to the identification card, a photograph of the agent, and no identification card shall be valid until signed by both the licensee and the agent, and countersigned by a representative of the Pennsylvania Liquor Control Board.

**Section 147.08 Privileges of Registered Agents.** Agents properly registered by a limited winery licensee and holding identification cards, as herein provided, may advertise and promote the sale of merchandise of those brands sold by the limited winery licensee by whom said agents are registered.





**REGULATION 148 CREDIT CARDS**

*(Effective February 26, 1970)*

**Section 148.01. Statutory Provision.** Section 493 (2) of the Liquor Code as amended by Act No. 11 approved February 16, 1970 permits a hotel, restaurant or public service licensee to extend credit to customers holding credit cards issued in accordance with regulations of the Board or credit cards issued by banking institutions subject to State or Federal regulation. In accordance with this provision of the law this regulation is promulgated as to credit cards other than those issued by banking institutions subject to State or Federal regulation.

**Section 148.02. Credit Cards Issued By Licensees.** A hotel, restaurant or public service licensee may issue credit cards to customers and extend credit thereon to customers provided that the person to whom the credit card has been issued has filed a written application therefor which application shall be retained in the records of the licensee.

**Section 148.03. Credit Cards Not Issued By Licensees.** A hotel, restaurant or public service licensee may extend credit to customers holding credit cards issued by companies, other than licensees, which issue credit cards and guarantee payment of credit given thereon, provided that the licensee has prior thereto entered into a written agreement to honor their credit cards and a copy of said written agreement shall be retained in the records of the licensee.



# REGULATION 149 ADVERTISING OF DISTILLED SPIRITS IN NEWSPAPERS, MAGAZINES, OR SIMILAR PUBLICATIONS

(Effective April 24, 1970)

**Section 149.01. Application.** No person engaged in business as a producer, manufacturer, bottler, importer, wholesaler, or retailer of distilled spirits, directly or indirectly, or through an affiliate, shall publish or disseminate or cause to be published or disseminated in any newspaper, magazine, or similar publication any advertisement of distilled spirits, unless such advertisement is in conformity with these regulations: Provided, That these provisions shall not apply to the publisher of any newspaper, magazine, or similar publication, unless such publisher is engaged in business as a producer, manufacturer, bottler, importer, wholesaler, or retailer of distilled spirits, directly or indirectly, or through an affiliate.

**Section 149.02. Definitions.** As used in these regulations, terms shall have the meaning ascribed below.

(a) **Advertisement.** The term "Advertisement" includes any advertisement of distilled spirits through the medium of newspapers, magazines, or similar publications, except that such term shall not include:

(1) Any label affixed to any container of distilled spirits or any individual covering, carton, or other wrapper of such container.

(2) Any editorial or other reading matter in any periodical or publication or newspaper for the preparation or publication of which no money or other valuable consideration is paid or promised, directly or indirectly, by any person subject to these regulations.

(b) **Distilled spirits.** "Distilled spirits" means ethyl alcohol, ethanol, or spirits of wine, including all dilutions and mixtures thereof, from whatever source or by whatever process produced, for beverage use, and shall include, but not be limited to neutral spirits, whisky, brandy, rum, gin, vodka, cordials, and liqueurs.

(c) **Person.** "Person" means any individual, partnership, joint-stock company, business trust, association, corporation, or other form of business enterprise, including a receiver, trustee, or liquidating agent.

**Section 149.03. Mandatory Statements.** (a) **Responsible advertiser.** The advertisement shall state the name and address of the producer, manufacturer, bottler, importer or wholesaler responsible for its publication. Street name and number may be omitted in the address.

(b) **Class, type, and distinctive designation.** The advertisement shall contain a conspicuous statement of the class and type, or other designation of the product, corresponding with the complete designation which appears on the brand label of the product.

(c) **Alcoholic content.** The alcoholic content shall be stated in the manner and form in which it appears on the labels of distilled spirits advertised.

(d) **Percentage of neutral spirits and name of commodity.** In the case of distilled spirits (other than cordials, liqueurs, and specialties) produced by blending or rectification, if neutral spirits have been used in

the production thereof, there shall be stated in the advertisement the percentage of neutral spirits so used and the name of the commodity from which such neutral spirits have been distilled in substantially the manner and form in which these statements appear on the labels of the distilled spirits advertised. In the case of neutral spirits or of gin produced by a process of continuous distillation, there shall be stated in the advertisement the name of the commodity from which such neutral spirits or gin has been distilled substantially in the manner and form in which this statement appears on the labels of the distilled spirits advertised.

(e) "Line" or "Brand" advertisements. Where an advertisement does not mention a specific product but merely refers to a class of distilled spirits (such as "whisky") and the advertiser markets more than one brand of distilled spirits of that class, or where the advertisement refers to several classes of distilled spirits (such as "whisky", "brandy", "rum", "gin", "liqueur", etc.) marketed under a single brand, the only mandatory information prescribed by Section 149.03 hereof applicable to such advertisement would be the name and address of the responsible advertiser.

(f) Retail establishments. Advertisements by retail establishments which merely refer to the availability of distilled spirits in such establishments but which otherwise make no reference to a specific brand of distilled spirits shall be subject only to the "Prohibited Statements" provisions of Section 149.05 of the regulations.

(g) Advertising of price and size. Advertisements of distilled spirits by vendors, which show liquor store prices, shall use the phrase "Retail Price" in quoting the current Pennsylvania Liquor Store retail price. Where reference to licensee discount is made the advertisement shall display the following conspicuous statement: "Discount to Licensees", and such phrase should appear on the line below "Retail Price."

No wholesale prices shall be shown in liquor advertisements except that direct mail advertisements to licensees, of Special Liquor Order Merchandise, may show the total wholesale case price as released by the Board.

A quart shall be advertised as "Quart," a  $\frac{4}{5}$  quart as "Fifth" or " $\frac{4}{5}$  Quart" and a pint as "Pint," etc., and all characters shall be of the same size.

Section 149.04. Lettering. (a) Conspicuousness of mandatory statements. Statements required by these regulations to be stated in any written, printed, or graphic advertisement shall appear in lettering of type of a size, kind and color sufficient to render them both conspicuous and readily legible.

In particular:

(1) Required information shall be stated against a contrasting background and in type or lettering which is at least the equivalent of eight-point type.

(2) Required information shall be so stated as to appear to be a part of the advertisement and shall not be separated in any manner.



from the remainder of the advertisement.

(3) Where an advertisement relates to more than one product, the required information shall appear in such manner as to clearly indicate the particular products to which it is applicable.

(4) Required information shall not be buried or concealed in un-required descriptive matter or decorative designs.

**Section 149.05. Prohibited Statements.** (a) **Restrictions.** An advertisement shall not contain:

(1) Any statement that is false or misleading in any material particular.

(2) Any statement that is disparaging of a competitor's products.

(3) Any statement, design, device, or representation which is obscene or indecent.

(4) Any statement, design, device, or representation of or relating to analyses, standards, or tests, irrespective of falsity, which is likely to mislead the consumer.

(5) Any statement, design, device, or representation of or relating to any guaranty, irrespective of falsity, which is likely to mislead the consumer.

(6) Any statement that the product is produced, blended, made, bottled, packed, or sold under, or in accordance with, any authorization, law, or regulation of any municipality, county, or State, Federal or foreign government unless such statement is required or specifically authorized by the laws or regulations of such government; and if a municipal, county, State or Federal permit number is stated, such permit number shall not be accompanied by any additional statement relating thereto.

(7) The advertisement shall not contain any statement concerning a brand or lot of distilled spirits that is inconsistent with any statement on the labeling thereof.

(8) The advertisement shall not contain any statement, design, or device representing that the use of any distilled spirits has curative or therapeutic effects, if such statement is untrue in any particular, or tends to create a misleading impression.

(9) The advertisement shall not represent that the distilled spirits were manufactured in, or imported from, a place or country other than that of their actual origin, or were produced or processed by one who was not in fact the actual producer or processor.

(10) No advertisement shall contain any statement, design, device, or pictorial representation of or relating to, or capable of being construed as relating to the armed forces of the United States, or of the American flag, or any State flag, or of any emblem, seal, insignia, or decoration associated with any such flag or the armed forces of the United States; nor shall any advertisement contain any statement, device, design or pictorial representation of or concerning any flag, seal, coat of arms, crest, other insignia or Pennsylvania Keystone,

likely to falsely lead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of the government, organization, family, or individual with whom such flag, seal, coat of arms, crest, insignia or Pennsylvania Keystone is associated.

(11) The words "bond," "bonded," "bottled in bond," "aged in bond," or phrases containing these or synonymous terms, unless such words or phrases appear upon the labels of the distilled spirits advertised, and are stated in the advertisement in the manner and form in which they appear upon the label.

(12) An advertisement for distilled spirits shall not contain any statement, design, or device directly or by implication concerning age or maturity of any brand or lot of distilled spirits unless a statement or age appears on the labels of the advertised product. When any such statement, design, or device concerning age or maturity is contained in any advertisement, it shall include (in direct conjunction therewith and with substantially equal conspicuousness) all parts of the statement concerning age and percentages, if any, which appear on the label. However, an advertisement for any whisky or brandy, which does not bear a statement of age on the label, or an advertisement for rum which is four years or more old, may contain general inconspicuous age, maturity or other similar representations, e.g., "Aged in Wood," "Mellowed in fine oak casks."

(13) Any statement, picture, or illustration referring to religious holidays, such as Easter, Holy Week or to "Santa Claus" (including names synonymous with "Santa Claus"): Provided, That nothing herein shall operate to prohibit references to the Christmas Holiday season if such references do not include statements, pictures, or illustrations on strictly religious themes; and provided further, that nothing in this paragraph shall prohibit the use of labels and advertisements for certain products which for many generations have referred to monasteries and religious orders.

(14) Any statement, picture, or illustration implying that the consumption of distilled spirits enhances athletic prowess, or any statement, picture, or illustration referring to any known athlete, if such statement, picture, or illustration implies, or if the reader may reasonably infer, that the use of distilled spirits contributed to such known athlete's athletic achievements.

(15) Any picture or illustration of a person which is immodest, undignified or in bad taste.

(16) Any picture or illustration depicting the use of distilled spirits in a group or festive scene which is undignified, immodest or in bad taste.

(17) Any offer of a prize or award to a consumer upon the completion of any contest in which there is a requirement to purchase the advertised product; Provided, that no distilled spirits advertisement shall promote a game of chance or a lottery.

**Section 149.06. Cooperative Advertising.** There shall be no cooperative advertising as between a producer, manufacturer, bottler, importer or wholesaler and a retailer of distilled spirits.

**Section 149.07. General Prohibition.** All types of advertising not specifically permitted are prohibited.

The advertising of anything which is unlawful is prohibited.

The Board shall have power to investigate and to order the immediate discontinuance of any acts in violation of the provisions of this regulation which may be revealed by such investigation.

Nothing herein contained shall exclude any other enforcement power granted the Board either by the provisions of the Liquor Code or any regulations adopted pursuant thereto.

**Section 149.08. Severability.** The sections of this regulation shall be deemed severable. Should any section be deemed by judicial opinion or legislative enactment to be invalid, unconstitutional or in any manner contrary to the laws of this Commonwealth, such opinion or enactment shall invalidate only that particular section of the regulation and all other sections shall remain in full force and effect.

It should be noted that the above regulation does not include all prohibitions set forth in the Liquor Code. Some of these prohibitions are:

**Section 493. Unlawful Acts Relative to Liquor, Malt and Brewed Beverages and Licensees.** The term "Licensees," when used in this section, shall mean those persons licensed under the provisions of Article IV, unless the context clearly indicates otherwise:

It shall be unlawful -

(18) **Displaying Price of Liquor or Malt or Brewed Beverages.** For any restaurant, hotel or club liquor licensee, or any importing distributor, distributor or retail dispenser, or the servants, agents or employees of such licensees to display on the outside of any licensed premises or to display any place within the licensed premises where it can be seen from the outside, any advertisement whatsoever referring, directly or indirectly, to the price at which the licensee will sell liquor or malt or brewed beverages.

(19) **Licensee's Outside Advertisements.** For any retail liquor licensee or any retail dispenser, distributor or importing distributor, to display in any manner whatsoever on the outside of his licensed premises, or on any lot of ground on which the licensed premises are situate, or on any building of which the licensed premises are a part, a sign of any kind, printed, painted or electric, advertising any brand of liquor or malt or brewed beverage, and it shall be likewise unlawful for any manufacturer, distributor or importing distributor, to permit the display of any sign which advertises either his products or himself on any lot of ground on which such licensed premises are situate, or on any building of which such licensed premises are a part.

(24) Things of Value Offered as Inducement. For any licensee under the provisions of this article, or the Board or any manufacturer, or any employe or agent of a manufacturer, licensee, or of the Board, to offer or give or solicit or receive anything of value as a premium or present to induce the purchase of liquor or malt or brewed beverage, or for any other purpose whatsoever in connection with the sale of such liquor or malt or brewed beverage, or for any licensee, manufacturer or other person to offer or give to trade or consumer buyers any prize, premium, gift or other similar inducement, except advertising novelties of nominal value which the Board shall define. . . . .

(Non-pertinent matter deleted)



**REGULATION 150 ADVERTISING OF WINE IN NEWS-PAPERS, MAGAZINES, OR SIMILAR PUBLICATIONS***(Effective April 24, 1970)*

**Section 150.01 Application.** No person engaged in business as a producer, bottler, importer, wholesaler, or retailer of wine, directly or indirectly, or through an affiliate, shall publish or disseminate or cause to be published or disseminated in any newspaper, magazine, or similar publication, any advertisement of wine unless such advertisement is in conformity with these regulations: Provided, That these provisions shall not apply to the publisher of any newspaper, magazine or similar publication unless such publisher is engaged in business as a producer, bottler, importer, wholesaler, or retailer of wine, directly or indirectly, or through an affiliate.

**Section 150.02. Definitions.** As used in these regulations, terms shall have the meaning ascribed below.

(a) **Advertisement.** The term "advertisement" includes any advertisement of wine through the medium of newspapers, magazines, or similar publications, except that such term shall not include:

(1) Any label affixed to any container of wine, or any individual covering, carton, or other wrapper of such container.

(2) Any editorial or other reading matter in any periodical or publication or newspaper for the preparation or publication of which no money or other valuable consideration is paid or promised, directly or indirectly, by any person subject to these regulations.

(b) **Wine.** The term "wine" means any fermented alcoholic beverage produced from grapes, fruit or other agricultural products, which contains 7 per cent or more alcohol by volume, and includes, but is not limited to, still wines, champagne and other sparkling wines, carbonated wines, imitation wines, vermouth, cider, perry, sake, or any other product offered for sale or sold as wine.

(c) **Person.** "Person" means any individual, partnership, joint-stock company, business trust, association, corporation, or other form of business enterprise, including a receiver, trustee, or liquidating agent.

**Section 150.03. Mandatory Statements.** (a) **Responsible advertiser.** The advertisement shall state the name and address of the producer, bottler, importer or wholesaler responsible for its publication. Street name and number may be omitted in the address.

(b) **Class, type and distinctive designation.** The advertisement shall contain a conspicuous statement of the class and type, or other designation of the product, corresponding with the complete designation which appears on the brand label of the product.

(c) **Retail establishments.** Advertisements by retail establishments which merely refer to the availability of wine in such establishments



but which otherwise make no reference to a specific brand of wine shall be subject only to the "Prohibited Statements" provisions of Section 150.05 of the regulations.

(d) Advertising of price and size. Advertisements of wine by vendors, which show liquor store prices, shall use the phrase "Retail Price" in quoting the current Pennsylvania Liquor Store retail price. Where reference to licensee discount is made the advertisement shall display the following conspicuous statement: "Discount to Licensees," and such phrase should appear on the line below "Retail Price."

No wholesale prices shall be shown in wine advertisements except that direct mail advertisements to licensees, of Special Liquor Order Merchandise, may show the total wholesale case price as released by the Board.

A quart shall be advertised as "Quart," a  $4/5$  quart as "Fifth" or " $4/5$  Quart" and a pint as "Pint," etc., and all characters shall be of the same size.

Section 150.04. Lettering. (a) Conspicuousness of mandatory statements. Statements required by these regulations to be stated in any written, printed, or graphic advertisement shall appear in lettering or type of a size, kind and color sufficient to render them both conspicuous and readily legible.

In particular:

(1) Required information shall be stated against a contrasting background and in a type of lettering which is at least the equivalent of eight-point type.

(2) Required information shall be so stated as to appear to be a part of the advertisement and shall not be separated in any manner from the remainder of the advertisement.

(3) Where an advertisement relates to more than one product, the required information shall appear in such manner as to clearly indicate the particular products to which it is applicable.

(4) Required information shall not be buried or concealed in unnecessary descriptive matter or decorative designs.

Section 150.05. Prohibited Statements. (a) Restrictions. An advertisement shall not contain:

(1) Any statement that is false or misleading in any material particular.

(2) Any statement that is disparaging of a competitor's products.

(3) Any statement, design, device, or representation which is obscene or indecent.

(4) Any statement, design, device, or representation of or relating to analyses, standards, or tests, irrespective of falsity, which is likely to mislead the consumer.

(5) Any statement, design, device, or representation of or relating to any guaranty, irrespective of falsity, which is likely to mislead the consumer.

(6) Any statement that the product is produced, blended, made, bottled, packed, or sold under, or in accordance with, any authorization, law or regulations of any municipality, county, or State, Federal or foreign government unless such statement is required or specifically authorized by the laws or regulations of such government; and if a municipal, county, State, or Federal permit number is stated, such permit number shall not be accompanied by any additional statement relating thereto.

(7) The advertisement shall not contain any statement concerning a brand or lot of wine that is inconsistent with any statement on the labeling thereof.

(8) The advertisement shall not contain any statement, design, or device representing that the use of any wine has curative or therapeutic effects, if such statement is untrue in any particular, or tends to create a misleading impression.

(9) The advertisement shall not represent that the wine was manufactured in, or imported from, a place or country other than that of the actual origin, or was produced or processed by one who was not in fact the actual producer or processor.

(10) No advertisement shall contain any statement, design, device, or pictorial representation of or relating to, or capable of being construed as relating to, the armed forces of the United States, or of the American flag, any State flag, or of any emblem, seal, insignia, or decoration associated with any such flag or the armed forces of the United States; nor shall any advertisement contain any statement, device, design, or pictorial representation of or concerning any flag, seal, coat of arms, crest, other insignia or Pennsylvania Keystone, likely to falsely lead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of the government, organization, family, or individual with whom such flag, seal, coat of arms, crest, insignia or Pennsylvania Keystone is associated.

(11) Any statement of bonded winecellar and bonded winery numbers unless stated in direct conjunction with the name and address of the person operating such winery or storeroom. Statement of bonded winecellar and bonded winery numbers may be made in the following form: "Bonded Winecellar No. \_\_\_\_\_," "Bonded Winery No. \_\_\_\_\_," "B.W.C. No. \_\_\_\_\_," "B.W. No. \_\_\_\_\_."

No additional reference thereto shall be made, nor shall any use be made of such statement that may convey the impression that the wine has been made or matured under U. S. Government or any State Government supervision or in accordance with U. S. Government or any State Government specifications or standards.

(12) Any statement, design, device, or representation which relates to alcoholic content or which tends to create the impression that a wine is "unfortified" or has been "fortified," or has intoxicating qualities, or contains distilled spirits (except for a reference to distilled spirits in a statement of composition where such statement is

required by these regulations to appear as a part of the designation of the product).

(13) No statement of age or representation relative to age (including words or devices in any brand name or mark) shall be made, except that:

(a) In the case of vintage wine, the year of vintage may be stated if it appears on the label:

(b) Truthful references of a general and informative nature relating to methods of production involving storage or aging, such as "This wine has been mellowed in oak casks," "Stored in small barrels" or "Matured at regulated temperatures in our cellars" may be made.

(c) The statement of any bottling date shall not be deemed to be a representation relative to age, if such statement appears without undue emphasis in the following form: "Bottled in \_\_\_\_" (inserting the year in which the wine was bottled).

(d) No date, except as provided in paragraphs (a), (b), and (c) of this section with respect to statement of vintage year and bottling date, shall be stated unless, in addition thereto, and in direct conjunction therewith, in the same size and kind of printing there shall be stated an explanation of the significance of such date: Provided, That if any date refers to the date of establishment of any business, such date shall be stated without undue emphasis and in direct conjunction with the name of the person to whom it refers.

(14) Any statement, picture, or illustration referring to religious holidays, such as Easter, Holy Week, or to "Santa Claus" (including names synonymous with "Santa Claus"): Provided, That nothing herein shall operate to prohibit references to the Christmas holiday season if such references do not include statements, pictures, or illustrations on strictly religious themes; and provided further, That nothing in this paragraph shall prohibit the use of statements, pictures, or illustrations alluding to the traditional use of wine, or the historical development of the wine growing industry in connection with the establishment of early religious communities or districts which may be associated with religious origins or development.

(15) Any statement, picture, or illustration implying that the consumption of wine enhances athletic prowess, or any statement, picture, or illustration referring to any known athlete, if such statement, picture or illustration implies, or if the reader may reasonably infer, that the use of wine contributed to such athlete's athletic achievements.

(16) Any picture or illustration of a person which is immodest, undignified or in bad taste.

(17) Any picture or illustration depicting the use of wine in a group or festive scene which is undignified, immodest or in bad taste.

(18) Any offer of a prize or award to a consumer upon the completion of any contest in which there is a requirement to purchase the advertised product: Provided, that no wine advertisement shall promote a game of chance or a lottery.

Section 150.06. Cooperative Advertising. There shall be no cooperative advertising as between producer, bottler, importer, or wholesaler and a retailer of wine.

Section 150.07. General Prohibition. All types of advertising not specifically permitted are prohibited.

The advertising of anything which is unlawful is prohibited.

The Board shall have power to investigate and to order the immediate discontinuance of any acts in violation of the provisions of this regulation which may be revealed by such investigation.

Nothing herein contained shall exclude any other enforcement power granted the Board either by the provisions of the Liquor Code or any regulations adopted pursuant thereto.

Section 150.08. Severability. The section of this regulation shall be deemed severable. Should any section be deemed by judicial opinion or legislative enactment to be invalid, unconstitutional or in any manner contrary to the laws of this Commonwealth, such opinion or enactment shall invalidate only that particular section of the regulation and all other sections shall remain in full force and effect.

It should be noted that the above regulation does not include all prohibitions set forth in the Liquor Code. Some of these prohibitions are:

Section 493. Unlawful Acts Relative to Liquor, Malt and Brewed Beverages and Licensees. The term "Licensee," when used in this section, shall mean those persons licensed under the provisions of Article IV, unless the context clearly indicates otherwise.

It shall be unlawful

(18) Displaying Price of Liquor or Malt or Brewed Beverages. For any restaurant, hotel or club liquor licensee, or any importing distributor, distributor or retail dispenser, or the servants, agents or employes of such licensees, to display on the outside of any licensed premises or to display any place within the licensed premises where it can be seen from the outside, any advertisement whatsoever referring, directly or indirectly, to the price at which the licensee will sell liquor or malt or brewed beverages.

(19) Licensee's Outside Advertisements. For any retail liquor licensee or any retail dispenser, distributor or importing distributor, to display in any manner whatsoever on the outside of his licensed premises, or on any lot of ground on which the licensed premises are situate, or on any building of which the licensed premises are a part, a sign of any kind, printed, painted or electric, advertising any brand of liquor or malt or brewed beverage, and it shall be likewise unlawful for any manufacturer, distributor and importing distributor, to permit the display of any sign which advertises either his products or himself on any lot of ground on which such licensed premises are situate, or on any building of which such licensed premises are a part.

(24) Things of Value Offered as Inducement. For any licensee under the provisions of this article, or the Board or any manufacturer, or any employe or agent of a manufacturer, licensee, or of the Board, . . . to offer or give or solicit or receive anything of value as a premium or present to induce the purchase of liquor or malt or brewed beverage, or for any other purpose whatsoever in connection with the sale of such liquor or malt or brewed beverage, or for any licensee, manufacturer or other person to offer or give to trade or consumer buyers any prize, premium, gift or other similar inducement, except advertising novelties of nominal value which the Board shall define. . . . .  
(Non-pertinent matter deleted).



## 4. SPIRITUOUS AND VINOUS LIQUOR TAX LAW

Act 6 of December 5, 1933, P. L. 38 (1933-34); amended by Act  
of December 22, 1933, P. L. 91 (1933-34); amended by Act  
434 of June 27, 1947, P. L. 1020).

### AN ACT

imposing State taxes, payable by those herein defined as  
manufacturers and importers, on the privilege of manu-  
facturing, selling, or using in this Commonwealth alcohol  
usable for beverage purposes and certain spirituous and  
vinous liquors; providing for the collection of the taxes, and  
the manner of making payment thereof; conferring powers  
and imposing duties on certain State officers and depart-  
ments, and upon manufacturers, importers and upon those  
using or engaging in the sale of such alcohol and such  
spirituous and vinous liquors; authorizing refunds or ex-  
emptions in certain cases, and making an appropriation  
therefor; and providing penalties.

**Section 1. Short Title.**—Be it enacted, &c., That this  
act shall be known, and may be cited, as the "Spirituous and  
Vinous Liquor Tax Law."

**Spirituous  
and Vinous  
Liquor Tax  
Law**

**Section 2. Definitions.**—The following words, terms,  
and phrases, when used in this act, shall have the meanings  
ascribed to them in this section, except in those instances  
where the context clearly indicates a different meaning.

**Definitions**

**"Association."** A partnership, limited partnership, or any  
other form of unincorporated enterprise owned by two or  
more persons.

**Association**

**"Container."** Any receptacle, vessel, or cask, barrel, drum,  
can or bottle, or other form of package used for the  
transferring or shipment of distilled spirits, rectified spirits,  
or wines.

**Container**

**"Corporation."** A corporation or joint stock association or-  
ganized under the laws of this Commonwealth, the United  
States, or any other state, territory, or foreign country or  
dependency.

**Corporation**

**"Department."** The Department of Revenue of this Com-  
monwealth.

**Department**

**"Distilled Spirits."** Any alcohol, other than denatured  
alcohol unfit for beverage purposes, and any liquid usable for  
beverage purposes which contain more than one-half of one  
per cent. of alcohol by volume, obtained by distillation or any  
process of evaporation, mixed with water and other substances  
in solution, including brandy, rum, whiskey, gin, and any  
other alcoholic beverage, obtained as aforesaid, by whatever  
name such beverage may be called. All wines containing  
more than twenty-four (24) per cent. absolute alcohol by  
volume shall be classed as "distilled spirits" for the purpose  
of this act.

**Distilled  
Spirits**

**Gallon**

"Gallon." A liquid measure containing two hundred thirty-one (231) cubic inches.

**Importer**

"Importer." Any person who or which—

1. Imports or causes to be imported from any other state or territory of the United States, or from any foreign country, distilled spirits, rectified spirits, or wines for his own use in the Commonwealth of Pennsylvania, or for sale and delivery in and after reaching the Commonwealth, other than in the original package, receptacle, or container.

2. Imports or causes to be imported from any other state or territory of the United States, or from any foreign country, distilled spirits, rectified spirits, or wines for his own use in the Commonwealth of Pennsylvania, or for sale or delivery therein, after the same have come to rest or storage therein, whether or not in the original package, receptacle, or container.

3. Purchases or receives distilled spirits, rectified spirits, or wines in the original package, receptacle, or container in the Commonwealth of Pennsylvania for his own use, or for sale and delivery therein, from any person who has imported the same from a foreign country.

4. Purchases or receives distilled spirits, rectified spirits, or wines in the original package, receptacle, or container in the Commonwealth of Pennsylvania for his own use therein, or for sale and delivery therein, from any person who has imported the same from any other state or territory of the United States, in case such distilled spirits, rectified spirits, or wines have not, prior to such purchase or receipt, come to rest or storage in the Commonwealth of Pennsylvania.

5. Receives and, in any manner, uses or distributes distilled spirits, rectified spirits, or wines in the Commonwealth of Pennsylvania where the tax provided in this act has not been previously paid.

**In bond**

"In bond." Distilled spirits, rectified spirits, and wines shall be construed to be "in bond" when they are lodged or stored in any place or warehouse, designated or defined from time to time by or pursuant to any act of Congress as a bonded winery, distillery, warehouse, general bonded warehouse or special bonded warehouse, under bond of the owner thereof conditioned upon the payment of taxes due thereon to the United States.

**Manufacturer**

"Manufacturer." Any person, association, or corporation engaged in the producing, manufacturing, distilling, rectifying or compounding of distilled spirits, rectified spirits, or wines in this Commonwealth.

**Person**

"Person." Every natural person, association, or corporation. Whenever used in a clause prescribing or imposing a fine or imprisonment, or both, the term "person," as applied to "association," shall mean the partners or members thereof, and, as applied to "corporation," shall mean the officers thereof.

**"Proof Gallon."** A gallon of liquid which contains one-half ( $\frac{1}{2}$ ) of its volume of alcohol of a specific gravity of seven thousand nine hundred thirty-nine ten thousandths (7939) at sixty degrees ( $60^{\circ}$ ) fahrenheit.

**Proof Gallon**

**"Rectified Spirits."** Any beverage containing more than one-half of one per cent. of alcohol by volume, obtained by rectification, redistillation, refining, or purifying of distilled spirits or wines by any process other than by original and continuous distillation from mash, wort or wash through continuous closed vessels and pipes until the manufacture thereof is completed, or by mixing distilled spirits, wines, or other liquor with any materials, or with any other distilled spirits, wines, or other liquor, thereby producing any spurious, imitation, blended or compound alcoholic liquor.

**Rectified  
Spirits**

**"Secretary."** The Secretary of Revenue of this Commonwealth, or his duly authorized deputy or representative.

**Secretary**

**"Spirituous and Vinous Liquors."** Distilled spirits, rectified spirits, and wines, as defined in this section.

**Spirituous  
and Vinous  
Liquors**

**"Wines."** Any beverage containing more than one-half of one per cent. and not more than twenty-four (24) per cent. absolute alcohol by volume, obtained by the fermentation of the natural sugar contents of fruits or other agricultural products containing sugar, including all natural wines and fortified wines within the above limits, but not including any beverage known as beer, lager beer, ale, porter, or similar fermented malt liquor obtained by alcoholic fermentation of an infusion or decoction of barley, malt, and hops in water. The singular shall include the plural, and the masculine shall include the feminine and neuter.

**Wines**

**Section 3. (As amended by Act 17 of December 22, 1933, P. L. 91 (1933-34)) Imposition of Tax.**—(a) Except as otherwise in this act provided, every manufacturer shall be subject to pay to the Commonwealth of Pennsylvania the taxes imposed in this section for the privilege of producing, manufacturing, distilling, rectifying or compounding distilled spirits, rectified spirits, or wines in this Commonwealth when such distilled spirits, rectified spirits, or wines are withdrawn from bond or, if not required by act of Congress to be stored or placed in bond, when prepared for market or for use in the manufacture or production of any beverage intended for sale.

**Imposition  
of tax on  
manufacturer**

Such taxes shall be measured by the amount of such distilled spirits, rectified spirits, and wines so produced, manufactured, distilled, rectified or compounded by the manufacturer on or after the effective date of this act, and shall be computed thereon at the following rates:

**Rate of tax**

On distilled spirits, one dollar (\$1) per proof gallon, or wine gallon when below proof, and a proportionate tax at a like rate on all fractional parts of such proof or wine gallon.

**On distilled  
spirits**

On rectified spirits, thirty cents (\$.30) per proof gallon, or wine gallon when below proof, and a proportionate tax at a like rate on all fractional parts of such proof or wine

**On rectified  
spirits**

gallon, in addition to the tax imposed herein on the privilege of manufacturing or producing, using or selling within the Commonwealth the distilled spirits or wines from which said rectified spirits are produced, manufactured or compounded.

On wines

On wines, one-half cent (\$.005) per unit of proof per wine gallon, and a proportionate tax at a like rate on all fractional parts of such wine gallon.

Provided, however, That the rate of tax on the privilege of manufacturing, producing or distilling in this Commonwealth distilled spirits or wines until January first, one thousand nine hundred thirty-four, shall be two dollars on each proof gallon, or wine gallon when below proof, and a proportionate tax at a like rate on all fractional parts of such proof or wine gallon, and that until January first, one thousand nine hundred thirty-four, the tax of thirty cents (\$.30) per proof gallon, or wine gallon when below proof, shall not be imposed for the privilege of rectifying spirits.

Imposition  
of tax on  
Importer

(b) Except as otherwise in this act provided, every importer shall be subject to pay to the Commonwealth of Pennsylvania the taxes imposed in this section for the privilege of selling or using in this Commonwealth distilled spirits, rectified spirits, or wines brought into this Commonwealth. Such taxes shall be measured by the amount of such distilled spirits, rectified spirits, and wines so sold or used by the importer in this Commonwealth on or after the effective date of this act, except as hereinafter provided, and shall be computed thereon at the following rates:

Rate of tax  
on distilled  
spirits

On distilled spirits, one dollar (\$1) per proof gallon, or wine gallon when below proof, and a proportionate tax at a like rate on all fractional parts of such proof or wine gallon.

On rectified  
spirits

On rectified spirits, one dollar and thirty cents (\$1.30) per proof gallon, or wine gallon when below proof, and a proportionate tax at a like rate on all fractional parts of such proof or wine gallon.

On wines

On wines, one-half cent (\$.005) per unit of proof per wine gallon, and a proportionate tax at a like rate on all fractional parts of such wine gallon.

Provided, however, That until the first day of January, one thousand nine hundred thirty-four, the rate of tax for the privilege of selling or using in this Commonwealth distilled spirits, rectified spirits, or wines brought into this Commonwealth, shall be two dollars on each proof gallon, or wine gallon when below proof, and a proportionate tax at a like rate on all fractional parts of such proof or wine gallon, unless a tax shall have been paid upon the privilege of producing, manufacturing, distilling, rectifying or compounding such distilled spirits, rectified spirits, or wines under clause

(a) of this section, or unless a floor tax shall have been paid upon such distilled spirits, rectified spirits, or wines under the provisions of act number one, approved the twenty-second day of November, one thousand nine hundred and thirty-three, entitled "An act imposing a State floor tax on alcohol usable for beverage purposes and certain alcoholic liquors in the Commonwealth between the date this act becomes effective and

the date the Twenty-first Amendment to the Constitution of the United States is ratified; describing the method and manner of collection of such tax; conferring powers and imposing duties on certain State officers and departments, and on certain individuals, firms and corporations; and imposing penalties."

Also provided, that the tax imposed by this section shall not be payable on the privilege of manufacturing or bringing into this Commonwealth any distilled spirits and wines sold to, or used by, any manufacturer or importer in this Commonwealth for the manufacture of rectified spirits whenever the manufacture of such rectified spirits is exempt from tax under the following provisions of this act.

**Exception**

**Section 4. Monthly Reports and Payments of Tax by Manufacturer; Penalty.**—For the purpose of ascertaining the amount of taxes payable under this act by manufacturers, it shall be the duty of each manufacturer, on or before the fifteenth day of each month, to transmit to the department, upon a form prepared and furnished by the department, a report, under oath or affirmation, of the distilled spirits, rectified spirits, and wines withdrawn from bond, or, if not required by act of Congress to be stored or placed in bond, prepared for market or for use in the manufacture or production of any beverage intended for sale by him within this Commonwealth, during the preceding month. Such reports shall show the number of proof gallons or wine gallons of alcoholic beverages withdrawn from bond, or, if not required by act of Congress to be stored or placed in bond, prepared for market or for use in the manufacture or production of any beverage intended for sale, during the period for which it is made, and such further information as the department shall prescribe.

**Monthly reports**

Every manufacturer, at the time of making each report required by this section, shall compute and pay to the department the tax due by him to the Commonwealth under the provisions of this act. The amount of all taxes imposed under the provisions of this act for every month shall be due and payable on the fifteenth day of the next succeeding month, and shall bear interest at the rate of one (1) per cent. per month, or fractional part of the month, from the day they were due and payable until paid.

**Payment of tax**

If any manufacturer shall neglect or refuse to make any report or payment as herein required, an additional ten per centum of the amount of taxes shall be added by the department, and collected as hereinafter provided, and, in addition thereto, the Pennsylvania Liquor Control Board, at the request of the department, may suspend any permit issued by it to such manufacturer.

**Penalty**

**Section 5. (As amended by Act 434 of June 27, 1947, P. L. 1020) Determination and Redetermination of Taxes, Penalty, and Interest Due by Manufacturers.**—

**Determination of taxes**

(a) If the department is not satisfied with the report and payment of taxes made by any manufacturer under the pro-



visions of this act, it is hereby authorized and empowered to make a determination of the taxes due by such manufacturer, based upon the facts contained in the report, or upon any information within its possession or that shall come into its possession.

Petition for  
redetermination

(b) Promptly after the date of any such determination, the department shall send, by registered mail, a copy thereof to such manufacturer. Within ninety (90) days after the date upon which the copy of any such determination was mailed, such manufacturer may file with the department a petition for redetermination of such tax. Every petition for redetermination shall state specifically the reasons which the petitioner believes entitle him to such redetermination, and shall be supported by affidavit that it is not made for the purpose of delay, and that the facts therein set forth are true. It shall be the duty of the department, within six (6) months after the date of any determination, to dispose of any petition for redetermination. Notice of the action taken upon any petition for redetermination shall be given to the petitioner promptly after the date of redetermination by the department.

Petition for  
review

(c) Within sixty (60) days after the date of mailing of notice by the department of the action taken on any petition for redetermination filed with it, the manufacturer, against whom such determination was made, may, by petition, request the Board of Finance and Revenue to review such action. Every petition for review filed hereunder shall state specifically the reasons upon which the petitioner relies, or shall incorporate, by reference, the petition for redetermination in which such reasons shall have been stated. The petition shall be supported by affidavit that it is not made for the purpose of delay, and that the facts therein set forth are true. If the petitioner be a corporation, joint-stock association or limited partnership, the affidavit must be made by one of the principal officers thereof. A petition for review may be amended by the petitioner at any time prior to the hearing thereon as hereinafter provided. The Board of Finance and Revenue shall act finally in disposition of such petitions filed with it within six (6) months after they have been received, and in the event of the failure of said board to dispose of any such petition within six (6) months, the action taken by the department upon the petition for redetermination shall be deemed sustained. The Board of Finance and Revenue may sustain the action taken on the petition for redetermination, or it may redetermine the taxes due upon such basis as it shall deem according to law and equity. Notice of the action of the Board of Finance and Revenue shall be given, by mail or otherwise, to the department and to the petitioner.

Appeal

(d) The Commonwealth of Pennsylvania or any person aggrieved by the decision of the Board of Finance and Revenue, or by the board's failure to act upon his petition for review within six (6) months, may, within sixty (60) days appeal to the court of common pleas of Dauphin County from the decision of the Board of Finance and Revenue, or from the decision of the department, as the case may be, in

the manner now or hereafter provided by law for appeals in the case of tax settlement.

(c) If any manufacturer shall neglect or refuse to make any report and payment of taxes required by this act, the department shall estimate the tax due by such manufacturer, and determine the amount due by him for taxes, penalties, and interest thereon, as prescribed herein, from which determination there shall be no right of review or appeal.

**Estimated tax**

**Section 6. Labels to Be Affixed to Containers by Manufacturers.**—Every manufacturer shall affix, to each container in which distilled spirits, rectified spirits, or wines are placed for sale, a label, setting forth the name of the manufacturer, the place where, and, until January first, one thousand nine hundred and thirty-four, the date, upon which the contents of such containers were produced, manufactured, distilled, rectified or compounded, and, unless such spirits or wines are tax exempt, the words "Pennsylvania Spirituous and Vinous Liquor Tax Paid." Such label shall be affixed in such manner that its removal shall require the continued application of steam or water.

**Labels**

**Section 7. Spirituous and Vinous Liquor Tax Stamps; Penalties.**—The payment of taxes herein provided to be paid by importers under the provisions of this act shall be evidenced by the affixing of "spirituous and vinous liquor tax stamps" to the containers in which all such beverages are intended for sale or use. Such stamps shall be affixed by importers to each individual container in which such beverages are intended for sale or use before such beverages are sold or used within this Commonwealth, unless a label has already been affixed to such container evidencing the payment of the floor tax imposed by Act No. 1, approved November 22, 1933.

**Tax Stamps**

Any importer who shall fail to affix to the containers of such beverages the stamp as required by this act shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not less than two hundred dollars (\$200) or more than one thousand dollars (\$1,000) and costs of prosecution, or to undergo imprisonment for a term of not less than six (6) months or more than three (3) years, or both, in the discretion of the court.

**Penalty**

Any importer who shall be convicted of a misdemeanor under this section shall, in addition to the punishment heretofore described, be adjudged to pay to the Commonwealth the taxes due, together with interest at the rate of one (1) per cent. per month, or fraction of a month, from the date when said taxes were due and payable. Such adjudication shall be certified to the prothonotary, and shall be indexed as and have the effect of a judgment for the amount of such tax and interest.

**Additional penalty**

**Section 8. Sale of Stamps and Reports by Importers.**—The department shall prescribe, prepare, and furnish such stamps as it deems necessary for the payment of the taxes to be paid by importers under the provisions of this act. The de-

**Sale of stamps**

**Appointment  
of agents**

partment shall make provisions for the sale of such stamps in such places and at such times as it may deem necessary.

The department may appoint persons, within or without the Commonwealth, as agents for the sale of stamps to be used in paying the taxes herein imposed; and whenever the department shall sell, consign, or deliver to any such agent any such stamps for sale or use, the agent shall be entitled to receive as compensation for his services and expenses as such agent, and to retain out of the moneys to be paid by him for such stamps, a commission of one-half of one-per cent. of the face-value thereof. The department is hereby authorized and required to allow such commission or compensation in the settlements of the accounts of such agent upon payment by him into the State Treasury, through the department, of any moneys which may be or become due to the Commonwealth by reason of the sale, delivery, or consignment to such agent of such stamps.

**Monthly  
reports**

For the purpose of verifying the stamp requirements of this act, it shall be the duty of every importer, on or before the tenth day of each month, to transmit to the department, on forms prepared and supplied by the department, a report, under oath or affirmation, of all spirituous and vinous liquors imported and sold or used by the importer in this Commonwealth, and such other information as the department shall prescribe.

**Manner of  
Affixing  
Stamps**

**Section 9. Manner of Affixing Stamps.**—Stamps shall be affixed in such manner that their removal shall require continued application of steam or water.

**Purchase and  
use of stamps  
by foreign  
vendors**

**Section 10. Purchase and Use of Stamps by Foreign Vendors.**—Producers or other vendors of distilled spirits, rectified spirits, and wines from without this Commonwealth may purchase stamps from the department and affix them, in the manner prescribed by the department, to original containers in which such beverages are to be sold in this Commonwealth, in which case the recipient of such beverages within this Commonwealth shall not be required to purchase and affix stamps thereon or pay the taxes herein imposed upon the privilege of selling or using such beverages within this Commonwealth.

**Counter-  
feiting**

**Section 11. Counterfeiting of Stamps; Penalty.**—Any person who falsely or fraudulently makes, forges, or alters or counterfeits any stamp prescribed by the department under the provisions of this act, or causes or procures to be falsely or fraudulently made, forged, altered or counterfeited any such stamp, or knowingly and wilfully utters, publishes, passes or tenders as true any such false, altered, forged or counterfeited stamp, or uses more than once any stamp provided for and required by this act, for the purpose of evading the tax hereby imposed and assessed, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to undergo imprisonment for a term of not less than two (2) years or more than five (5) years.

**Penalty**

**Section 12. Examination of Records, Equipment and Stock.**—The department, or any agent appointed by it, is hereby authorized, at any time, to examine the books, papers, invoices, other records and manufacturing equipment pertaining to, and stock of, distilled spirits, rectified spirits, and wines in and upon any premises where the same are placed, stored or sold, either by manufacturers or importers or any other person, to verify the accuracy of any report required to be made by this act or payment of, or liability for, the taxes imposed by this act. Any person in possession of such beverages is hereby directed and required to give the Secretary of Revenue, or his duly authorized representative, the means, facilities and opportunity for such examinations.

**Examination  
by Department  
agents**

The department is hereby authorized to furnish any information obtained by it in the exercise of its duties under the provisions of this act, concerning distilled spirits, rectified spirits, and wines manufactured in or imported into this Commonwealth, to the proper authorities of this or of any other state, territory, or the United States, and to obtain similar information from the proper authorities of any other state, territory, or the United States.

**Furnishing  
information to  
other authori-  
ties**

**Section 13. Acceptance of Beverages Not Bearing the Labels or Stamps Required by This Act.**—It shall be unlawful for any retail dealer, consumer, or any person, other than an importer, to accept delivery of distilled spirits, rectified spirits, or wines in containers upon which the labels required to be affixed by manufacturers, or the stamps required to be affixed by importers, under the provisions of this act or of Act number one, approved November twenty-two, one thousand nine hundred thirty-three, do not appear, and, upon conviction thereof in a summary proceeding before a magistrate, alderman, or justice of the peace, he shall be fined twenty-five dollars (\$25), and, in default of payment thereof, shall undergo imprisonment for not more than ten (10) days.

**Acceptance of  
Untaxed Bev-  
erage**

**Section 14. Uncollectible Checks.**—Whenever any check, issued in payment of tax, penalty, or interest imposed by this act, shall be returned to the department as uncollectible, the department shall charge a fee of five dollars (\$5) per one hundred dollars (\$100), or fractional part thereof, plus all protest fees, to the person presenting such check to the department.

**Penalty**

**Uncollectible  
checks**

**Section 15. Retention of Records by Manufacturers and Importers.**—Each manufacturer and importer shall maintain and keep, for such period as may be required by the department, such record or records of distilled spirits, rectified spirits, and wines produced, manufactured, distilled, rectified or compounded in or imported into this Commonwealth by him, together with invoices, bills of lading, and other pertinent papers, as may be required by the department.

**Retention of  
records**

Any person violating any of the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of one thousand dollars

**Penalty**



(\$1,000), and costs of prosecution, or to undergo imprisonment for not more than one year, or both, in the discretion of the court.

**Violations**

**Section 16. Violations.**—(a) Any person who shall fail, neglect, or refuse to make the report and pay the taxes, penalties, and interest imposed by this act, or who shall refuse to permit the department, or any agent appointed by it in writing, to examine his books, records, invoices, other papers and manufacturing equipment pertaining to, and stock of distilled spirits, rectified spirits, and wines within this Commonwealth, or who shall make any incomplete, false or fraudulent report, or who shall attempt to do anything whatsoever to avoid a full disclosure of the amount of distilled spirits, rectified spirits, and wines by which the taxes under this act are measured, or to avoid the payment of the whole or any part of the taxes, penalties, and interest due, shall be guilty of a misdemeanor, and shall, upon conviction thereof, be sentenced to pay a fine not exceeding one thousand dollars (\$1,000), and costs of prosecution, and to undergo imprisonment for not less than six (6) months or more than three (3) years. Such fine shall be in addition to any penalty imposed by any other section or subsection of this act.

**False report****False label**

(b) Any person who shall falsely label any container in which distilled spirits, rectified spirits, or wines are placed for sale, or use a false or fictitious name or give a false or fictitious address in any application or form required under the provisions of this act or otherwise commit a fraud in any application, record or report, shall be guilty of a misdemeanor, and shall, upon conviction thereof, be sentenced to pay a fine of not less than five hundred dollars (\$500) or more than one thousand dollars (\$1,000), and costs of prosecution, or undergo imprisonment for not less than six (6) months or more than three (3) years, or both, in the discretion of the court. Such fine shall be in addition to any penalty imposed by any other section or subsection of this act.

**P.L.C.B. license**

(c) Upon the conviction of any person of any of the misdemeanors described in this section, the Pennsylvania Liquor Control Board, at the request of the department, may revoke any permit issued by it to such person.

**Enforcement**

**Section 17. Enforcement.**—The department is hereby charged with the enforcement of the provisions of this act, and is hereby authorized and empowered to prescribe, adopt, promulgate, and enforce rules and regulations relating to any matter or thing pertaining to the administration and enforcement of the provisions of this act, and the collection of taxes, penalties, and interest imposed by this act.

**Disposition of monies**

**Section 18. Disposition of Tax, Fees, Fines and Interest.**—All taxes, fines, penalties and interest, received, collected or accruing under the provisions of this act, shall be paid into the General Fund of the State Treasury by and through the department.



**Section 19.** (*As amended by Act 17 of December 22, 1933, P. L. 91 (1933-34)*) **Exemption from Tax.**—No taxes shall be imposed or collected under the provisions of this act upon the privilege of producing, selling, or using such distilled spirits, rectified spirits, and wines as are sold to, or sold or used, by the Commonwealth, or are sold to the United States, or any governmental agency thereof, or for the use of any university or college of learning, any laboratory for use exclusively in scientific research, or any hospital, sanatorium, or eleemosynary dispensary.

**Exemption  
from tax**

**Section 20. Other Exemptions.**—No tax shall be imposed under the provisions of this act upon the privilege of manufacturing or selling any wine for, to, or by the holder of a sacramental wine permit; or upon the privilege of manufacturing or selling any distilled spirits, rectified spirits, or wines for or to pharmacists, duly licensed and registered under the laws of this Commonwealth, or manufacturing pharmacists or chemists or other persons for use in the manufacture or compounding of preparations unfit for beverage purposes; or upon the privilege of manufacturing, importing, storing or using alcohol in the manufacture or production of denatured alcohol in accordance with the laws of the Congress of the United States and regulations issued pursuant thereto.

**Other  
exemptions**

**Section 21. Refunds and Exemptions; Appropriation.**

—(a) Upon application to the Board of Finance and Revenue, the board shall refund to any manufacturer who has paid the tax imposed by this act on the privilege of producing, manufacturing, distilling, rectifying or compounding distilled spirits, rectified spirits, or wines shipped to dealers outside of this state the difference between the tax paid and the tax which would have been payable, at the lowest rate of tax, upon the same privilege imposed by any other state or insular possession of the United States which is in substantial competition with this State in the production, manufacture, distilling, rectifying or compounding of distilled spirits, rectified spirits, or wines of the kind, for the privilege of producing or manufacturing which, the applicant paid the tax; and if any such state or insular possession imposes no tax upon such privilege when the product is shipped out of the state or possession, then the board shall refund to the applicant the entire tax paid.

**Refunds and  
exemptions**

**Reciprocal tax**

(b) Any producer, manufacturer, distiller, rectifier or compounder of distilled spirits, rectified spirits, or wines may, at any time, file with the board a petition, setting forth the same facts which would be necessary to sustain a claim for refund under clause (a) hereof, and requesting the board to certify its findings to the department. If the board shall find that any state is in competition, as alleged in the petition, it shall immediately certify its finding to the department, together with such facts as are pertinent, and thereafter the department shall permit exemptions, equal in amount to the refunds which would be payable under the preceding clause.

**Petition**

until such time as new information indicates that a change has occurred in the facts presented to the Board of Finance and Revenue. As new facts are from time to time certified to the department by the Board of Finance and Revenue, the department shall modify or cancel the exemptions theretofore allowed.

**Appropriation**

(c) As much of the revenue accruing from this act as is necessary is hereby appropriated to the Board of Finance and Revenue for the payment of the refunds authorized by clause (a) hereof.

**Mandamus proceeding**

(d) Upon the refusal of the board to grant refunds, or certify findings and facts to the department, any person aggrieved thereby may institute mandamus proceedings in the court of common pleas of Dauphin County.

**Constitutionality**

**Section 22. Constitutional Construction.**—The provisions of this act are severable, and if any of its provisions shall be held to be unconstitutional, the decision of the court shall not affect or impair any of the remaining provisions of this act. It is hereby declared to be the legislative intent that this act would have been adopted had such unconstitutional provisions not been included herein.

**Effective date and period**

**Section 23. (As amended by Act 17 of December 22, 1933, P. L. 91 (1933-34)) Effective Date and Effective Period.**—This act shall become effective the day after the day the Twenty-first Amendment to the Constitution of the United States is ratified by conventions in at least three-fourths of the several states.

This act shall cease to be effective upon the effective date of any act of Congress providing for participation by the states, or by those states which do not tax distilled spirits, in the proceeds of the tax imposed and collected by the United States upon distilled spirits.

## 5. MALT BEVERAGE TAX LAW

(Act 104 of May 5, 1933, P. L. 284; amended by Act 212 of July 9, 1935, P. L. 628; amended by Act 119 of April 29, 1937, P. L. 527; amended by Act 184 of July 24, 1941, P. L. 477; amended by Act 101 of May 14, 1947, P. L. 247; amended by Act 345 of June 21, 1947, P. L. 801; amended by Act 430 of May 18, 1949, P. L. 1459; amended by Act 113 of May 29, 1951, P. L. 481; amended by Act 51 of June 2, 1965, P. L. 64 )

### AN ACT

Imposing a State tax, payable by those herein defined as manufacturers and by others, on malt or brewed beverages used, sold, transported or delivered within the Commonwealth; prescribing the method and manner of evidencing the payment and collection of such tax; conferring powers and imposing duties on the Department of Revenue, and those using or engaged in the sale, at retail or wholesale, or in the transportation of malt or brewed beverages taxable hereunder; and providing penalties.

**Section 1.** Be it enacted, &c., That this act shall be known, and may be cited, as the "Malt Beverage Tax Law."

**Section 2.** (*As amended by Act 51 of June 2, 1965, P. L. 64* ) The following words, terms, and phrases, when used in this act, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

"Malt or Brewed Beverages." Alcoholic beverages, which include beer, lager beer, ale, porter, or similar fermented malt liquor, containing one-half of one per centum or more of alcohol, by whatever name such liquors may be called.

"Department." Department of Revenue of this Commonwealth.

"Distributor." A person engaged in the purchase and resale of malt or brewed beverages in the original sealed packages as prepared for market by the manufacturer, including any who or which—

1. Imports or causes to be imported from any other state or territory of the United States, or from any foreign country, malt or brewed beverages for his own use in the Commonwealth of Pennsylvania, or for sale and delivery in and after reaching the Commonwealth.

2. Imports or causes to be imported from any other state or territory of the United States, or from any foreign country, malt or brewed beverages for his own use in the Commonwealth of Pennsylvania, or for sale or delivery therein, after the same have come to rest or storage therein, in the original package, receptacle, or container.

3. Purchases or receives malt or brewed beverages in the original package, receptacle, or container in the Commonwealth of Pennsylvania for his own use, or for sale and delivery therein, from any person who has imported the same from a foreign country.

4. Purchases or receives malt or brewed beverages in the original package, receptacle, or container in the Commonwealth of Pennsylvania for his own use therein, or for sale and delivery therein, from any person who has imported the same from any other state or territory of the United States, in case such malt or brewed beverages have not, prior to such purchase or receipt, come to rest or storage in the Commonwealth of Pennsylvania.

"Manufacturer." A person engaged in the brewing or manufacturing of malt or brewed beverages for sale, and for the purposes of posting bond and payment of taxes required under the provisions of this act, shall include importing agents for foreign manufacturers.

"Original Container." Bottle, cask, keg, or other container that has been securely capped, sealed, or corked by the manufacturer, with the name and address of the manufacturer permanently affixed to the bottle, cask, keg, or other container, or to the cap or cork used in sealing the same, or to a label securely affixed to a bottle.

"Person." An individual or an unincorporated association, including a partnership, a limited partnership, or any other form of unincorporated enterprise owned by two or more individuals, or a corporation. Whenever used in any clause prescribing and imposing a fine or imprisonment, or both, the term "person," as applied to a partnership, limited partnership, or any other form of unincorporated enterprise, shall mean the partners or members thereof, and, as applied to corporations, the officers thereof.

"Retail Dealer." A person engaged in the retail sale of malt or brewed beverages either for consumption on the premises or not for consumption on the premises where sold.

"Sale." Any transfer for a consideration, exchange, barter, gift, offer for sale, and distribution, in any manner or by any means whatsoever.

The singular shall include the plural, and the masculine shall include the feminine and the neuter.

**Section 3.** (*As amended by Act 119 of April 29, 1937, P. L. 527; Act 184 of July 24, 1941, P. L. 477; Act 101 of May 14, 1947, P. L. 247; Act 430 of May 18, 1949, P. L. 1459; Act 113 of May 29, 1951, P. L. 481 and Act 51 of June 2, 1965, P. L. 64*) (a) Each manufacturer shall be subject to pay to the Commonwealth the taxes imposed by this section upon all malt or brewed beverages manufactured and sold by him in this Commonwealth for use in this Commonwealth or manufactured by him outside this Commonwealth and sold to an importing distributor or any person for importation into, and use in, this Commonwealth. Every person who ships or transports malt or brewed beverages into this Commonwealth for sale, delivery or storage in this Commonwealth shall pay to the Commonwealth the taxes imposed in this section. Such taxes, payable in the manner

prescribed in subsections (a) and (b) of section 4 of this act, shall be at the rate of two third cent ( $2/3\text{¢}$ ) per half pint of eight (8) fluid ounces or fraction thereof, and in larger quantities at the rate of one cent ( $1\text{¢}$ ) per pint of sixteen (16) fluid ounces or fraction thereof.

The tax rates per original container or standard fraction thereof are as follows:

Standard Fraction	Malt Beverage Tax Rate	Volume
1 barrel	\$2.48	31 gal.
1/2 barrel	1.24	15 1/2 gal.
1/3 barrel	.84	10 1/3 gal.
1/4 barrel	.62	7 3/4 gal.
1/6 barrel	.42	5 1/6 gal.
1/8 barrel	.32	3 7/8 gal.
1 gallon	.08	
1/2 gallon	.04	
1 quart	.02	
1 pint	.01	
1/2 pint	.0066	

(a.1) If the tax shall not be paid when due, there shall be added to the amount of the tax as a penalty a sum equivalent to ten per cent (10%) thereof, and in addition thereto interest on the tax and penalty at the rate of one per cent (1%) per month or fraction of a month from the date the tax became due until paid. Nothing herein contained shall be construed to relieve any person otherwise liable from liability for payment of the tax.

(b) In the event that any state, territory or country shall impose upon malt or brewed beverages, which have been manufactured in Pennsylvania, a higher tax or fee than is imposed upon malt or brewed beverages manufactured within such state, territory or country, every manufacturer whose malt or brewed beverages manufactured within such state, territory or country are sold to an importing distributor or any person for importation into, and use in, this Commonwealth shall, as to such beverages, pay thereon to this Commonwealth, in addition to the tax imposed by this section, a tax equal to such excess tax or fee which is imposed in such state, territory or country on Pennsylvania manufactured malt or brewed beverages. Such additional tax shall be levied, assessed, and collected in the same manner as the other taxes imposed by this act.

(c) Manufacturers whose malt or brewed beverages are sold in this Commonwealth or are sold to importing distributors or any person for importation into and use in this Commonwealth shall be liable to the Commonwealth as taxpayers for the payment of the taxes imposed by this act.



# **Malt Beverage Tax Law**

**Section 4.** *(As amended by Act 119 of April 29, 1937, P. L. 527; Act 345 of June 21, 1947, P. L. 801; and Act 51 of June 2, 1965, P. L. 64)* (a) Each manufacturer whose malt or brewed beverages are sold in or imported into this Commonwealth shall, on or before the fifteenth day of each month, file with the department, on forms prescribed by it, a verified report showing for the preceding calendar month the quantities of such malt and brewed beverages:

(1) Manufactured by him in this Commonwealth, and constituting his beginning and ending inventory in this Commonwealth for the month;

(2) Sold by him in this Commonwealth for use in this Commonwealth or sold to an importing distributor or any person for importation into, and use in, this Commonwealth, specifically naming the distributors to whom such sales were made and the quantity sold to each;

(3) Sold to purchasers or persons outside this Commonwealth for exportation from, and use outside, this Commonwealth, or sold in other tax exempt transactions, naming the purchasers and the quantity sold to each and specifically indicating those sales or transactions to which the tax imposed by this act is not applicable;

(4) Such additional information as the department may reasonably require to assure the accuracy of the tax computation and payment and the proper administration of this act.

The tax payable on all malt or brewed beverages first sold in this Commonwealth for use in this Commonwealth or first sold to an importing distributor or any person for importation into, and use in, this Commonwealth during such month in the amount disclosed by the report shall accompany the report and be paid by the manufacturer to the department.

(b) Persons licensed as "Public Service Licensees," under the provisions of any law of this Commonwealth relating to the sale of malt or brewed beverages, shall keep such records of the sales of such malt or brewed beverages in this Commonwealth as the Department of Revenue shall prescribe; shall, on or before the fifteenth day of each month, submit monthly reports of such sales and of such other information as the department may require to the Department of Revenue upon a form prescribed therefor by said department, and shall pay the tax due on all such sales at the rate provided by the provisions of this Act at the time such reports are filed.

It is the intent and purpose of this section to require all manufacturers and other persons whose malt or brewed beverages are sold or used in this Commonwealth to pay the tax on all such malt or brewed beverages in the month following that in which such beverages are first sold in this Commonwealth for use in this Commonwealth or first sold to an importing distributor or any person for importation into and use in this Commonwealth, except that as to malt or brewed beverages sold to public service licensees, the

public service licensees, and not the manufacturer, shall report and pay the tax on all malt or brewed beverages sold by them within the Commonwealth.

(c) (*Repealed by Act 51 of June 2, 1965, P. L. 64*)

(d) If any person shall fail to pay any tax imposed by this act for which he is liable, the department is hereby authorized and empowered to make an assessment of additional tax due by such person, based upon any information within its possession, or that shall come into its possession.

(e) Promptly after the date of such assessment, the department shall send by registered mail a copy thereof to the person against whom it was made. Within ninety (90) days after the date upon which the copy of any such assessment was mailed, such person may file with the department a petition for reassessment of such taxes. Every petition for reassessment shall state specifically the reasons which the petitioner believes entitle him to such reassessment, and it shall be supported by affidavit that it is not made for the purpose of delay, and that the facts set forth therein are true. It shall be the duty of the department, within six (6) months after the date of any assessment, to dispose of any petition for reassessment. Notice of the action taken upon any petition for reassessment shall be given to the petitioner promptly after the date of reassessment by the department.

(f) Within sixty (60) days after the date of mailing of notice by the department of the action taken on any petition for reassessment filed with it, the person against whom such assessment was made, may, by petition, request the Board of Finance and Revenue to review such action. Every petition for review filed hereunder shall state specifically the reason upon which the petitioner relies, or shall incorporate by reference the petition for reassessment in which such reasons shall have been stated. The petition shall be supported by affidavit that it is not made for the purpose of delay, and that the facts therein set forth are true. If the petitioner be a corporation, joint-stock association, or limited partnership the affidavit must be made by one of the principal officers thereof. A petition for review may be amended by the petitioner at any time prior to the hearing thereon, as hereinafter provided. The Board of Finance and Revenue shall act finally in disposition of such petitions filed with it within six (6) months after they have been received, and in the event of the failure of said board to dispose of any such petition within six (6) months, the action taken by the department upon the petition for reassessment shall be deemed sustained. The Board of Finance and Revenue may sustain the action taken on the petition for reassessment, or it may reassess the tax due upon such basis as it shall deem according to law and equity. Notice of the action of the Board of Finance and Revenue shall be given by mail, or otherwise, to the department and to the petitioner.

**Malt Beverage Tax Law**

(g) The Commonwealth of Pennsylvania or any person aggrieved by the decision of the Board of Finance and Revenue or by the board's failure to act upon his petition for review within six (6) months may, within sixty (60) days, appeal to the Court of Common Pleas of Dauphin County from the decision of the Board of Finance and Revenue or from the decision of the department, as the case may be, in the manner now or hereafter provided by law for appeals in the case of tax settlement.

(h) In all cases of petitions for reassessment, review or appeal the burden of proof shall be upon the petitioner or appellant, as the case may be.

(i) Whenever any assessment of additional tax is not paid within ninety (90) days after the date thereof, if no petition for reassessment has been filed, or within sixty (60) days from the date of reassessment, if no petition for review has been filed, or within sixty (60) days from the date of the decision of the Board of Finance and Revenue upon petition for review, or the expiration of the board's time for acting upon such petition, if no appeal has been made, and in all cases of judicial sales, receiverships, assignments or bankruptcies, the department may call upon the Department of Justice to collect such assessment. In such event, in a proceeding for the collection of such taxes, the person against whom they were assessed shall not be permitted to set up any ground of defense that might have been determined by the department, the Board of Finance and Revenue or by the courts as aforesaid. The department may also certify to the Liquor Control Board, for such action as the board may deem proper, the fact that any person has failed to pay or duly appeal from such assessment of additional tax. The department may also provide, adopt, promulgate, and enforce such rules and regulations, as may be appropriate, to prevent further shipment or transportation of malt or brewed beverages into this Commonwealth by any person against whom such unpaid assessment shall have been made.

**Section 4.1.** *(As added by Act '51 of June 2, 1965, P. L.*

64) (a) No malt or brewed beverages shall be sold in or imported into Pennsylvania until and unless the manufacturer of such malt or brewed beverages has on file with the department and in full force and effect an approved bond, duly executed, payable to the Commonwealth of Pennsylvania, together with a warrant of attorney to confess judgment in a sum equal to the amount of his highest two month average tax liability during the last year prior to the time of giving bond, but in no event less than five thousand dollars (\$5,000.00). All such bonds shall be conditioned upon the payment of the tax imposed by this act, and shall have as surety a duly authorized surety company, or shall have deposited therewith, as collateral security, cash or negotiable obligations of the United States of America or the Commonwealth of Pennsylvania in the same amount as herein provided for the penal sum of such bonds.

(b) In all cases where cash or securities in lieu of other surety have been deposited with the department, the depositor shall be permitted to continue the same deposit from year to year, but in no event shall he be permitted to withdraw his deposit during the time he holds a license, or until six months after the expiration of the license, if any, held by him, or while revocation proceedings are pending against such licensee, or while forfeiture proceedings are pending against the depositor's bond.

(c) All cash or securities received by the department in lieu of other surety shall be turned over by the department to the State Treasurer and held by him. The State Treasurer shall repay or return money or securities deposited with him to the respective depositors only on the order of the department.

(d) After notice from the department that such a bond has been forfeited, the State Treasurer shall immediately pay into the General Fund all cash deposited as collateral with such bond, and when securities have been deposited with such a bond, the State Treasurer shall sell at private sale, at not less than the prevailing market price, any such securities so deposited as collateral with any such forfeited bond. The State Treasurer shall thereafter deposit in the General Fund the net amount realized from the sale of such securities, except that if the amount so realized, after deducting proper costs and expenses, is in excess of the penal amount of the bond, such excess shall be paid over by him to the obligor on such forfeited bond.

(e) Every such bond shall be turned over to the Department of Justice to be collected if and when the depositor shall have been held liable for the unlawful nonpayment of taxes imposed by this act.

**Section 5.** (*Repealed by Act 51 of June 2, 1965, P. L. 64*)

**Section 6.** (*Repealed by Act 51 of June 2, 1965, P. L. 64*)

**Section 7.** (*As amended by Act 51 of June 2, 1965, P. L. 64*)

(a) For the purpose of verifying the tax payments required by this act, it shall be the duty of every transporter for hire, bailee for hire, warehouseman, distributor, and retail licensee, on or before the fifteenth day of the succeeding month, to transmit to the department, on forms supplied by the department, a report, under oath or affirmation, of malt or brewed beverages which were imported and came to rest or storage, at his place of business in this Commonwealth during the preceding month, or which were transported from a point outside the Commonwealth to a point within the Commonwealth. Such report shall show the number of barrels, or standard fraction thereof, imported, transported, or stored during the period for which it is made.



**Malt Beverage Tax Law**

and such further information as the department shall prescribe.

(b) Each manufacturer, transporter for hire, bailee for hire, warehouseman, distributor, and retail licensee shall maintain and keep, for a period of two (2) years, such record or records of malt or brewed beverages manufactured, sold by a manufacturer or distributor, transported from a point outside of the Commonwealth to a point within the Commonwealth, imported, or substantiating the other information required on his report, together with invoices, bills of lading, and other pertinent papers, as may be required by the department.

**Section 8.** The department, or any agent appointed in writing by it, is hereby authorized to examine the books, papers, invoices, and other records, and the stock of malt or brewed beverages in and upon any premises where the same are placed, stored or sold, and in or on any car, vessel, truck, vehicle, or other means of transportation, to verify the payment of or liability for the tax imposed by this act. Any person in possession of such malt or brewed beverages is hereby directed and required to give the Secretary of Revenue, or his duly authorized representative, the means, facilities, and opportunities for such examination. The department, or any of its duly authorized agents, is hereby authorized to confiscate any malt or brewed beverages stored, sold, or transported in violation of the provisions hereof.

**Section 9.** (*Repealed by Act 51 of June 2, 1965, P. L. 64*)

**Section 10.** (*As amended by Act 119 of April 29, 1937, P. L. 527; Act 184 of July 24, 1941, P. L. 477; and Act 51 of June 2, 1965, P. L. 64*) (a) In case any malt or brewed beverages upon which the tax has been paid by a manufacturer have been sold or shipped by him to a licensed or regular dealer in such malt or brewed beverages in another state, such manufacturer in this Commonwealth shall be entitled to a refund of the actual amount of tax paid by him, upon condition that the seller in this Commonwealth shall make affidavit that the malt or brewed beverages were so sold and shipped, and that he shall furnish from the purchaser an affidavit, or in cases where the total purchase price is five dollars (\$5.00) or less, a written certificate in lieu of an affidavit from the purchaser, or, upon satisfactory proof that such affidavit or certificate cannot be obtained, other evidence satisfactory to the department that he has received such malt or brewed beverages for sale or consumption outside the Commonwealth, together with the name and address of the purchaser.

(b) In case any malt or brewed beverages upon which the tax has been paid by a manufacturer have been sold to commissaries, ship's stores or voluntary unincorporated organizations of the armed forces personnel operating under regu-



promulgated by the Secretary of Defense, such manufacturer shall be entitled to a refund of the actual amount of tax paid by him, upon condition that he shall make affidavit and furnish proof that the malt or brewed beverages were so sold.

(c) In case any malt or brewed beverages upon which the tax has been paid by an out of State manufacturer and subsequently sold by an importing distributor to commissaries, ship's stores or voluntary unincorporated organizations of the armed forces personnel operating under regulations promulgated by the Secretary of Defense, such manufacturer shall be entitled to a refund of the actual amount of tax paid by him upon condition that he shall make affidavit and furnish proof that the malt or brewed beverages were so sold.

(d) In case any malt or brewed beverages, upon which the tax has been paid by a manufacturer shall be rendered unsaleable by reason of damage or destruction, such manufacturer shall be entitled to a refund of the actual amount of tax paid by him, upon condition that he shall make affidavit and furnish proof satisfactory to the department that the malt beverages were so damaged or destroyed.

(e) In case any malt or brewed beverages upon which the tax has been paid by a manufacturer have been sold and delivered to a public service licensee who is obligated to pay the tax thereon, such manufacturer shall be entitled to a refund of the actual amount of tax paid by him, upon condition that he shall make affidavit and furnish proof satisfactory to the department of such facts.

In each of the above cases the department shall, with the approval of the Board of Finance and Revenue, pay or issue to the manufacturer credits of sufficient value to cover the refund. Such credits may be used by the manufacturer for the payment of any taxes due by him to the Commonwealth. The procedure for refund in any case shall be completed by the Department of Revenue and the Board of Finance and Revenue within sixty days after the proper affidavits have been filed with the department.

**Section 11.** (As amended by Act 51 of June 2, 1965, P. L. 64). The department shall promulgate rules and regulations to relieve manufacturers from paying the tax on their goods as are sold and shipped to points outside this Commonwealth, or as are sold in other tax exempt transactions.

**Section 12.** (As amended by Act 119 of April 29, 1937, P. L. 527; and Act 51 of June 2, 1965, P. L. 64) It shall be unlawful for any person to transport into the Commonwealth of Pennsylvania, taxable malt or brewed beverages in containers on which the tax is not paid or provisions for the payment thereof are not made pursuant to the provisions of this act. The transportation of malt or brewed beverages

in violation of this section shall be a misdemeanor, and, upon conviction thereof in a summary proceeding before a magistrate, alderman or justice of the peace, such person shall be fined ten dollars (\$10.00) for each container so transported, and, in default of payment thereof, shall undergo imprisonment for not more than five (5) days for each container so transported. Transportation into Pennsylvania of malt or brewed beverages in containers other than in the manner prescribed by the regulations of the department, shall be prima facie evidence of violation of this section.

**Section 13.** Any person who shall fail, neglect, or refuse to comply with or shall violate any provision of this act, for which violation no specific penalty is provided, or any of the rules and regulations, prescribed, adopted, and promulgated by the department under the provisions of this act, or who shall refuse to permit the department, or any agent appointed by it in writing, to examine his books, papers, invoices, and other records, his stock of malt or brewed beverages in and upon any premises where the same are prepared, stored, and sold, in or on any car, vessel, truck, vehicle, or other means of transportation, and his equipment pertaining to the manufacture, transportation, storage, or sale of malt or brewed beverages taxable under this act, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not less than one hundred dollars (\$100.00) or more than five hundred dollars (\$500.00), or to suffer imprisonment of not more than six (6) months, or both, in the discretion of the court.

**Section 14.** (*Repealed by Act 51 of June 2, 1965, P. L. 64*)

**Section 15.** The department is hereby charged with the enforcement of the provisions of this act, and is hereby authorized and empowered to prescribe, adopt, promulgate, and enforce rules and regulations relating to any matter or thing pertaining to the administration and enforcement of the provisions of this act and the collection of taxes, penalties, and interest imposed by this act.

The department is hereby authorized and directed to prescribe, adopt, promulgate, and enforce rules and regulations relating to the transportation of malt or brewed beverages through the Commonwealth and from points outside of the Commonwealth to points within the Commonwealth, and to prescribe, adopt, promulgate, and enforce rules and regulations reciprocal to those of, or laws of, any other state or territory affecting the transportation of malt or brewed beverages manufactured in Pennsylvania.

**Section 16.** All taxes, fines, penalties, and interest received, collected, or accruing under the provisions of this act, shall be paid into the general fund of the State Treasury by and through the department.

**Section 17.** The provisions of this act are severable, and, any of its provisions shall be held to be unconstitutional, the decision of the court shall not affect or impair any of the remaining provisions of this act. It is hereby declared to be the legislative intent that this act would have been adopted had such unconstitutional provisions not been included herein.

*The following sections of amending Act 51 of June 2, 1965, L. 64 provide:*

**Section 13.** Nothing in this act shall be construed or deemed to require the payment of the tax imposed by this act more than once upon any malt or brewed beverage imported into, or sold, delivered or stored in this Commonwealth; and such tax shall not be assessed or collected more than once on any such malt or brewed beverages.

**Section 14.** The purchase and affixation of malt and brewed beverages tax stamps and crowns shall not be required hereafter in this Commonwealth, and all requirements pertaining to the purchase and affixation of malt and brewed beverages tax stamps and crowns are hereby abolished.

**Section 15.** Each manufacturer may take credit on his monthly report for the full amount of the tax paid by the affixation, before the effective date of this act, of stamps, crowns or lids to the original container of malt or brewed beverages included in the taxable transactions covered by his report. The department shall allow the manufacturer credit on his report or a refund in the amount of the tax paid for (1) tax stamps returned unused to the department within sixty days after the effective date of this act, and (2) tax crowns or lids as to which the manufacturer has submitted satisfactory proof to the department, within sixty days after the effective date of this act, that the crowns and lids were in his possession as unused inventory on the effective date of this act. For the purpose of offsetting the temporary reduction in revenue occasioned by the transition from the prepayment of tax stamps, crowns and lids to the reporting method, each manufacturer who files a bond under the provisions of subsection (a) of section 4.1 of this act shall, within six months after the effective date of this act, prepay on account of future tax liability to the department an amount in cash or its equivalent equal to such manufacturer's highest two months' tax liability for tax stamps and crowns or lids during the twelve month period ending July 31, 1965. The manufacturer may apply on account of such prepayment so much of the tax heretofore paid for stamps and crowns or lids for which he is entitled to refund or credit. The amount so prepaid shall thereafter be credited to the manufacturer's tax liability at the rate of three per cent (3%) per month until depleted, AS PROVIDED BY REGULATION OF THE DEPARTMENT OF REVENUE. The manufacturer shall, after determina-

tion of the amount of refund or credit due him for his crown and lid inventory on the effective date of this act, thereafter he permitted to use crowns or lids constituting that inventory on his malt and brewed beverages solely as proprietary crowns, or lids, without such use indicating payment of the tax.

**Section 16:** (a) Clause (10) of section 492, act of April 12, 1951 (P. L. 90), known as the "Liquor Code," is repealed in so far as it requires tax stamps or crowns to be affixed to containers in which malt or brewed beverages are transported.

(b) All other acts and parts of acts are repealed in so far as they are inconsistent herewith.

**Section 17.** This act shall take effect July 1, 1965.

## 6. EMERGENCY TAX LAW

(Act 4 of June 9, 1936, P.L. 13; as last amended and re-enacted by Act 112 of May 29, 1951, P.L. 479; as amended by Act 68 of June 6, 1963, P.L. 100 and Act 413 of January 1, 1968, P.L. )

### AN ACT

Imposing an emergency State tax on liquor, as herein defined, sold by the Pennsylvania Liquor Control Board; providing for the collection and payment of such tax; and imposing duties upon the Department of Revenue and the Pennsylvania Liquor Control Board.

**Section 1.** Be it enacted, &c., That the following words, terms, and phrases used in this act are, for the purposes hereof, defined, as follows:

"Liquor." Any alcoholic, spirituous, vinous, fermented, or other alcoholic beverage, or combination of liquors and mixed liquor, a part of which is spirituous, vinous, fermented, or otherwise alcoholic, and all drinks or drinkable liquids, preparations or mixtures intended for beverage purposes, which contain more than one-half of one per centum of alcohol by volume, except alcohol, and malt or brewed beverages.

"Department." The Department of Revenue of this Commonwealth.

"Board." The Pennsylvania Liquor Control Board of this Commonwealth.

"Fiscal Month." The monthly period established, from time to time, by the Pennsylvania Liquor Control Board for the purpose of conducting its business.

**Section 2.** (As amended by Act 413 of January 1, 1968, P.L. ) An emergency State tax is hereby imposed and assessed at the rate of eighteen per centum of the net price of all liquors sold by the Board. The tax herein imposed shall be collected by the Board from the purchasers of the liquor from the Board. The amount of such eighteen per centum so collected by the Board, under the provisions of this act, shall be paid into the State Treasury, through the department, in the manner and within the times herein specified, and shall be credited to the General Fund.

**Section 3.** (As amended by Act 413 of January 1, 1968, P.L. ) It shall be the duty of the Board to transmit to the department on, or before, the fifteenth day of each calendar month, a statement of its receipts from sales of liquor and taxes collected during the preceding fiscal month, and such other information as may be necessary to effectuate the provisions of this act, at which time it

**Definitions**

**Liquor**

**Department**

**Board**

**Fiscal Month**

**Rate of Tax**

**Board to  
transmit  
monthly  
statements  
to department**



**Emergency Tax Law**

**Alternate  
method of  
computing  
tax**

shall be the duty of the Board to pay to the department the tax imposed upon such liquor by the provisions of this act: Provided, That the Board may, in its discretion, add the tax imposed by this act to the wholesale and retail price at which liquors are sold and eliminate any accounting of such tax separate from sale prices, and in such case, the amount of the tax for any calendar month shall be ascertained by dividing the entire gross receipts derived from sales at Pennsylvania liquor stores during such month by six and five-ninths ( $6 \frac{5}{9}$ ), and the quotient thus obtained shall be deemed the amount of the tax for such month payable over, under this section.

**Act effective  
immediately**

**Section 4.** This act shall become effective immediately upon its final enactment.

**NOTE:**

Rate of tax was changed by Act 68 of June 6, 1963,  
P.L. 100 - effective June 6, 1963.

Rate of tax was again changed by Act 413 of January 1, 1968, P.L. - effective January 1, 1968.

## 7. EXTRACTS FROM "THE PENAL CODE"

(Act 375 of June 24, 1939, P. L. 872)

### Section 302. Conspiracy To Do Unlawful Act.—Any

Conspiracy

two or more persons who falsely and maliciously conspire and agree to cheat and defraud any person of his moneys, goods, chattels, or other property, or do any other dishonest, malicious, or unlawful act to the prejudice of another, are guilty of conspiracy, a misdemeanor, and on conviction, shall be sentenced to pay a fine not exceeding five hundred dollars (\$500), or to undergo imprisonment, by separate or solitary confinement at labor or by simple imprisonment, not exceeding two (2) years, or both.

\* \* \*

### Section 303. (As amended by Act 218 of July 31, 1963,

Bribery

P. L. 421) Bribery of Governmental Officers and Employees; Judges, Jurors, etc.—Whoever shall directly or indirectly, or by means of and through any artful and dishonest device whatever, give or make any promise, contract or agreement, for the payment, delivery, or alienation of any money, goods or other thing, in order to obtain or influence the vote, opinion, verdict, award, judgment, decree, or behavior of any member of the General Assembly, or any officer or employe of this Commonwealth, or of any political subdivision thereof, or any judge, juror, justice, referee or arbitrator, in any bill, action, suit, complaint, indictment, controversy, matter or thing whatsoever, depending or which shall depend before him or them, is guilty of bribery, a misdemeanor, and on conviction thereof, shall be sentenced to pay a fine not exceeding five hundred dollars (\$500), or to undergo imprisonment by separate or solitary confinement at labor not exceeding one (1) year, or both.

The member of assembly, or officer, or employe of the Commonwealth or of any political subdivision thereof, or any judge, juror, justice, referee, or arbitrator, who shall accept or receive, or agree to accept or receive such bribe, is guilty of receiving a bribe, a felony; and on conviction thereof, shall be sentenced to pay a fine not exceeding one thousand dollars (\$1,000), or to undergo imprisonment by separate or solitary confinement at labor not exceeding five (5) years, or both.

\* \* \*

Section 304. Corrupt Solicitation.—Whoever, directly or indirectly, by offer or promise of money, office, appointment, employment, testimonial or other thing of value, or by threats or intimidation, endeavors to influence any member of the General Assembly, State, county, election, municipal or other public officer, in the discharge, performance, or nonperformance of any act, duty or obligation pertaining to such office, is guilty of corrupt solicitation, a misdemeanor, and on conviction thereof, shall be sentenced to pay a fine not exceeding

Corrupt  
Solicitation

one thousand dollars (\$1,000), or to undergo imprisonment not exceeding two (2) years, or both.

\* \* \*

#### Embracery

**Section 308. Embracery.**—Whoever attempts to corrupt or influence any juror, or any arbitrator appointed according to law, by endeavoring, either in conversation or by written communication, or by persuasion, promise or entreaty, or by any other private means, to bias the mind or judgment of the juror or arbitrator, as to any cause pending in the court to which such juror has been summoned, or in which such arbitrator has been appointed or chosen, except by the strength of evidence or the arguments of himself or his counsel during the trial or hearing of the case, is guilty of embracery, a misdemeanor, and on conviction, shall be sentenced to pay a fine not exceeding five hundred dollars (\$500), or undergo imprisonment not exceeding one (1) year, or both.

\* \* \*

#### Obstructing Officer

**Section 314.** (*As amended by Act 143 of May 21, 1943, P. L. 306 and Act 131 of July 11, 1963, P. L. 234*) **Obstructing an Officer in the Execution of Process or in the Performance of His Duties.**—Whoever knowingly, wilfully and forcibly obstructs, resists or opposes any officer or other person duly authorized, in serving or attempting to serve or execute any legal process or order, or in making a lawful arrest without warrant, or assaults or beats any officer or person, duly authorized, in serving or executing any such legal process or order or for and because of having served or executed the same; or in making a lawful arrest without warrant; or rescues another in legal custody; or whoever being required by any officer, neglects or refuses to assist him in the execution of his office in any criminal case, or in the preservation of the peace, or in apprehending and securing any person for a breach of the peace, is guilty of a misdemeanor, and on conviction, shall be sentenced to imprisonment not exceeding one (1) year, or to pay a fine not exceeding five hundred dollars (\$500), or both.

\* \* \*

#### Aggravated assault and battery on police officer

**Section 314.1.** (*As added by Act 131 of July 11, 1963, P. L. 234*) **Committing an Aggravated Assault and Battery upon a Police Officer.**—Whoever commits an aggravated assault and battery upon a police officer making or attempting to make a lawful arrest is guilty of a felony, and on conviction, shall be sentenced to pay a fine not exceeding two thousand dollars (\$2,000) or to undergo imprisonment not exceeding five (5) years, or both.

\* \* \*

#### Extortion

**Section 318. Extortion.**—Whoever, being a public officer, wilfully and fraudulently receives or takes any reward or fee to execute and do his duty and office, except such as is or shall be allowed by some act of Assembly, or receives or

takes, by color of his office, any fee or reward whatever, not more than is, allowed by law, is guilty of extortion, a misdemeanor, and on conviction, shall be sentenced to pay a fine not exceeding five hundred dollars (\$500), or to undergo imprisonment not exceeding one (1) year, or both.

\* \* \*

**Section 319. Falsely Impersonating an Officer.**—Whoever falsely represents himself to be or falsely assumes to act as a detective or any elective or appointive officer of the Commonwealth, or of any political subdivision thereof, is guilty of a misdemeanor, and upon conviction thereof, shall be sentenced to pay a fine not exceeding five hundred dollars (\$500), or to undergo imprisonment not exceeding one (1) year, or both.

**Impersonation  
of officer**

\* \* \*

**Section 320. Falsely Impersonating Persons and Officers Privately Employed.**—Whoever, without due authority, pretends or holds himself out to any one as an employe of any person, corporation or association, for the purpose of gaining access to any premises, or as a deputy sheriff, marshal, policeman, constable or peace officer employed by any person, corporation or association, is guilty of a misdemeanor, and upon conviction thereof, shall be sentenced to pay a fine not exceeding five hundred dollars (\$500), or undergo imprisonment not exceeding one (1) year, or both.

**Impersonation  
of private  
employe**

\* \* \*

**Section 322. Perjury and Subornation Thereof.**—Whoever wilfully and corruptly makes false oral or written statements, or testimony upon oath or affirmation, legally administered either before any committee of the Legislature, or in any judicial proceeding, matter or cause which may be pending in any of the courts, or before any judge, magistrate or mayor, or before any arbitrator, prothonotary, clerk, notary public, commissioner or auditor, appointed by any court of this Commonwealth, or in any deposition taken pursuant to the laws of this Commonwealth, or the rules, orders and directions of any court, arbitrator or judge thereof, or preparatory and for the purpose of obtaining any rule or order of court, or of a judge or arbitrator, or whoever in taking any other oath or affirmation required by any act of Assembly of this Commonwealth, or in relation to any statement or duty enjoined by law, is guilty of perjury, a felony, and whoever wilfully and corruptly procures or suborns any other person to make any such false oath or affirmation, is guilty of subornation of perjury, a felony, and on conviction of either offense, shall be sentenced to pay a fine not exceeding three thousand dollars (\$3,000), or undergo imprisonment by separate or solitary confinement at labor not exceeding seven (7) years, or both, and shall, except as otherwise provided by law, be forever disqualified from being a witness in any matter in controversy.

**Perjury**

**Falsification**

**Section 328.** (*As amended by Act 387 of September 26, 1951, P. L. 1535*) **Falsification In Matters Within Jurisdiction Of State Agencies.**—Whoever, in any matter within the jurisdiction of any department, board, commission or agency of the Commonwealth of Pennsylvania, knowingly and wilfully falsifies, conceals or covers up, by any trick, scheme or device, a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document, knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine not exceeding three hundred dollars (\$300) or undergo imprisonment not exceeding one (1) year, or both.

\* \* \*

**Disorderly Conduct**

**Section 406.** **Disorderly Conduct.**—Whoever wilfully makes or causes to be made any loud, boisterous and unseemly noise or disturbance to the annoyance of the peaceable residents near by, or near to any public highway, road, street, lane, alley, park, square, or common, whereby the public peace is broken or disturbed or the traveling public annoyed, is guilty of the offense of disorderly conduct, and upon conviction thereof in a summary proceeding, shall be sentenced to pay the costs of prosecution and to pay a fine not exceeding ten dollars (\$10), and in default of the payment thereof, shall be imprisoned for a period not exceeding thirty (30) days.

\* \* \*

**Carrying Deadly Weapons**

**Section 416.** (*As amended by Act 443 of April 4, 1950, P. L. 1383*) **Carrying Deadly Weapons.**—Whoever carries any firearm, slungshot, handy-billy, dirk-knife, razor or any other deadly weapon, concealed upon his person, or any knife, razor or cutting instrument, the blade of which can be exposed in an automatic way by switch, push-button, spring mechanism, or otherwise, with the intent therewith unlawfully and maliciously to do injury to any other person, is guilty of a misdemeanor, and upon the conviction thereof, shall be sentenced to pay a fine not exceeding five hundred dollars (\$500), or undergo imprisonment not exceeding one (1) year, or both.

The jury trying the case may infer such intent from the fact the defendant carried such weapon.

\* \* \*

**Disorderly House**

**Section 511.** **Disorderly House.**—Whoever keeps and maintains a common, ill-governed and disorderly house or place, to the encouragement of idleness, gaming, drinking, or misbehavior, and to the common nuisance and disturbance of the neighborhood or orderly citizens, is guilty of a misdemeanor, and on conviction, shall be sentenced to pay a fine not exceeding five hundred dollars (\$500), or to undergo imprisonment not exceeding one (1) year, or both.



**Section 512. Prostitution and Assignment.**—Whoever uses any building, conveyance or place for the purpose of prostitution or assignment, or knowing or having reasonable cause to know that same is to be so used, or permits any building, conveyance or place owned by him or under his control, to be used for the purpose of prostitution or assignment; or whoever commits prostitution or assignment, or aids or abets prostitution or assignment, by any means whatsoever, or whoever directs, takes, or transports, or offers or agrees to direct, take, or transport, any person to any building, or place, with knowledge that the purpose of such directing, taking or transporting is prostitution or assignment, is guilty of a misdemeanor, and upon conviction, shall be sentenced to pay a fine not exceeding five hundred dollars (\$500), or to undergo imprisonment for a period not exceeding one (1) year, or both.

Prostitution;  
Assignment

In the case of prostitution, the imprisonment may, at the discretion of the court, be by commitment to a private institution in the Commonwealth adapted to the proper control of women of this class, and approved by the State Department of Health and State Department of Public Welfare. In no case shall the accused be committed to a religious institution other than of her own faith, if any faith is professed. All institutions accepting persons for commitment under the provisions of this section shall, at all times, be open to State inspection so far as the welfare of the persons so committed is concerned.

In the trial of any person charged with the violation of any of the provisions of this section, testimony concerning the reputation of any place, structure, or building, and of the person or persons who reside in or frequent the same, and of the defendant, shall be admissible in evidence in support of the charge.

\* \* \*

**Section 528.** (As amended by Act 389 of September 23, 1959, P. L. 945) **Obscene Exhibition.**—Whoever gives or participates in, or being the owner of any premises, or having control thereof, permits within or on said premises, any dramatic, theatrical, operatic, or vaudeville exhibition, or the exhibition of fixed or moving pictures, of an obscene nature, is guilty of a misdemeanor, and upon conviction thereof, shall be sentenced to pay a fine not exceeding one thousand five hundred dollars (\$1,500), or undergo imprisonment for a period not exceeding two (2) years, or both.

Obscene  
Exhibition

An exhibition shall be deemed obscene if, to the average person applying contemporary community standards, its dominant theme taken as a whole appeals to prurient interest.

**Establishing  
Gambling  
Places**

**Section 605. Establishing Gambling Places.**—Whoever sets up or establishes, or causes to be set up or established, any game or device of address, or hazard, at which money or other valuable thing may or shall be played for, or staked or betted upon; or procures, permits, suffers and allows persons to collect and assemble for the purpose of playing at, and staking or betting upon such game or device of address, or hazard, for money or other valuable thing; or whoever, being the owner, tenant, lessee or occupant of any premises, leases, hires, or rents the same, or any part thereof, to be used and occupied, or employed for the purpose of playing at, or staking and betting upon such game or device of address, or hazard, for money or other valuable thing, is guilty of a misdemeanor, and on conviction, shall be sentenced to pay a fine not exceeding five hundred dollars (\$500), or undergo imprisonment not exceeding one (1) year, or both.

The owner of such premises who shall have knowledge that any such game or device of address, or hazard, has been set up in or upon the said premises, and shall not forthwith cause complaint to be made against the person who has set up or established the same, shall be deemed to have knowingly leased, hired or rented the said premises for the said purpose.

This section shall not be construed to apply to games of recreation and exercise, such as billiards, bagatelle, ten pins, etc., where no betting is allowed.

\* \* \*

**Pool-Selling;  
Book-Making**

**Section 607. Pool-Selling and Book-Making.**—Whoever engages in pool-selling, or book-making, or occupies any place with books, apparatus or paraphernalia for the purpose of recording or registering bets or wagers, or of selling pools, or records or registers bets or wagers, or sells pools upon the result of any political nomination, appointment or election, or being the owner or lessee or occupant of any premises, knowingly permits the same to be used or occupied for any of such purposes, or keeps, exhibits or employs therein any device or apparatus for the purpose of recording or registering such bets or wagers, or the selling of such pools, or becomes the custodian or depository for gain, hire or reward of any money, property or thing of value staked, wagered or pledged, or to be wagered or pledged, upon any such result, or receives, registers, records, forwards, or purports or pretends to forward, to or for any race-course, any money, thing or consideration of value, bet or wager or money, thing or consideration, offered for the purpose of being bet or wagered upon the speed or endurance of any man or beast, or occupies any place with books, papers, apparatus or paraphernalia, for the purpose of receiving or pretending to receive, or for recording or registering or for forwarding, or pretending or attempting to forward in any manner, any money, thing or consideration of value, bet or wagered, or to be bet or wagered, for any other person, or receives or offers to receive any money, thing or consideration of value.

bet or to be bet at any race-track, or assists or abets in any manner in any of the acts forbidden by this section, is guilty of a misdemeanor, and upon conviction thereof, shall be sentenced to pay a fine of not more than five hundred dollars (\$500), or undergo imprisonment of not more than one (1) year, or both.

\* \* \*

**Section 643.** (*As amended by Act 347 of August 11, 1941, P. L. 911 and Act 503 of January 14, 1952, P. L. 1864*) **Employment of Minors in Places where Liquors are Sold or Given Away and Elsewhere.**—Whoever, having the care, custody or control of any minor under the age of eighteen (18) years, permits the employment of, or being a proprietor or manager, employs or permits such child to sing, dance, act or exhibit in any place where wines or spirituous or malt liquors are sold or given away, or any place connected therewith by any passageway or entrance, or whoever employs or permits any such minor to deliver liquor or malt and brewed beverages, or being the proprietor or manager of any dance house, theatre or place of entertainment, employs any minor under the age of fifteen (15) years, is guilty of a misdemeanor, and upon conviction thereof, shall be sentenced to pay a fine not exceeding one hundred dollars (\$100), and in default in the payment of such fine, and costs, shall be sentenced to imprisonment not exceeding three (3) months.

**Employment of minors.**

\* \* \*

**Section 675.** (*As amended by Act 444 of July 18, 1957, P. L. 1004*) **Misrepresentation of Age by Minor to Secure Liquor.**—Whoever, being under the age of twenty-one (21) years, knowingly and falsely represents himself to be twenty-one (21) years of age to any licensed dealer or other person, for the purpose of procuring or having furnished to him, any intoxicating liquors, is guilty of a misdemeanor, and upon conviction thereof, shall be sentenced to pay a fine of not less than one hundred dollars (\$100) and not exceeding three hundred dollars (\$300), or undergo imprisonment not exceeding six months, or both.

**Misrepresentation of age by minor**

\* \* \*

**Section 675.1.** (*As added by Act 465 of August 14, 1963, P. L. 1098 and amended by Act 337 of November 10, 1965, P. L. 707*) **Prohibiting the Purchase, Consumption, Possession or Transportation of Intoxicating Liquors or Malt or Brewed Beverages by Minors.**—(a) It shall be unlawful for a person less than twenty-one years of age to attempt to purchase, to purchase, consume, possess or to transport any alcohol, liquor or malt or brewed beverages within the Commonwealth.

(b) Any person violating the provisions of this section shall, upon conviction in a summary proceeding, be sentenced to pay a fine of not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100) and costs of prosecution, or undergo imprisonment for a term not exceeding thirty (30) days, or both.

(c) *(As added by Act 337 of November 10, 1965, P. L. 707)* Any fine imposed in a summary proceeding pursuant to the provisions of this section shall be decreed to be paid to the city, borough, town or township in which the offense was committed, for the use of such city, borough, town or township.

\* \* \*

Misrepresentation that minor is of age

**Section 676. Representing to Liquor Dealer that Minor Is of Age.**—Whoever knowingly, wilfully, and falsely represents to any licensed dealer or other person, any minor to be of full age, for the purpose of inducing any such licensed dealer or other person, to sell or furnish any intoxicating liquors to said minor, is guilty of a misdemeanor, and upon conviction thereof, shall be sentenced to pay a fine not exceeding fifty dollars (\$50), or undergo imprisonment for a period not exceeding sixty (60) days, or both.

\* \* \*

Inducing minors to buy liquor

**Section 677. Minors, Inducement of, To Buy Liquor Prohibited.**—Whoever hires, or requests or induces any minor to purchase, or offer to purchase, spirituous, vinous or brewed and malt liquors from a duly licensed dealer for any purpose, is guilty of a misdemeanor, and upon conviction thereof, shall be sentenced to pay a fine not exceeding five hundred dollars (\$500), or to undergo imprisonment not exceeding one (1) year, or both.

\* \* \*

Assault and Battery

**Section 708. Assault and Battery.**—Whoever commits an assault and battery, or an assault is guilty of a misdemeanor, and upon conviction thereof, shall be sentenced to pay a fine not exceeding one thousand dollars (\$1,000), or undergo imprisonment not exceeding two (2) years, or both.

\* \* \*

Aggravated Assault and Battery

**Section 709. Aggravated Assault and Battery.**—Whoever unlawfully and maliciously inflicts upon another person, either with or without any weapon or instrument, any grievous bodily harm, or unlawfully cuts, stabs or wounds any other person, is guilty of a misdemeanor, and upon conviction thereof, shall be sentenced to pay a fine not exceeding two thousand dollars (\$2,000), or undergo imprisonment, either at labor by separate or solitary confinement or to simple imprisonment, not exceeding three (3) years, or both.



**Section 711. Attempts with Intent To Kill.**—Whoever attempts to administer any poison or other destructive thing, or attempts to cut or stab or wound, or shoots at any person, or, by drawing a trigger or in any other manner, attempts to discharge any kind of loaded arms at any person, or attempts to drown, suffocate or strangle any person, with intent to commit the crime of murder, although no bodily injury is effected, is guilty of felony, and shall be sentenced to pay a fine not exceeding three thousand dollars (\$3,000), or undergo imprisonment, by separate and solitary confinement at labor, not exceeding seven (7) years, or both.

**Attempt to kill**

\* \* \*

**Section 712. Assault with Intent To Maim.**—Whoever unlawfully and maliciously, shoots at any person, or, by drawing a trigger or by any other manner, attempts to discharge any kind of loaded arms at any person, or stabs, cuts or wounds any person, with intent to maim, disfigure or disable such person, is guilty of felony, and on conviction, shall be sentenced to pay a fine not exceeding two thousand dollars (\$2,000), or undergo imprisonment, by separate or solitary confinement at labor, not exceeding five (5) years, or both.

**Assault to maim**

\* \* \*

**Section 716. Pointing Deadly Weapons.**—Whoever playfully or wantonly points or discharges a gun, pistol or other firearm at any other person, is guilty of a misdemeanor, and upon conviction thereof, shall be sentenced to pay a fine not exceeding five hundred dollars (\$500), or undergo imprisonment not exceeding one (1) year, or both.

**Pointing deadly weapons**

\* \* \*

**Section 844. False Statements by Accountants.**—Whoever, practicing as an accountant, public accountant, auditor, or certified public accountant wilfully issues, or permits, the issuance of, any false statement of the financial transactions, standing, or condition of any corporation, partnership, or individual business undertaking, is guilty of a misdemeanor, and upon conviction thereof, shall be sentenced to pay a fine not more than five hundred dollars (\$500), or undergo imprisonment for a period not exceeding one (1) year, or both.

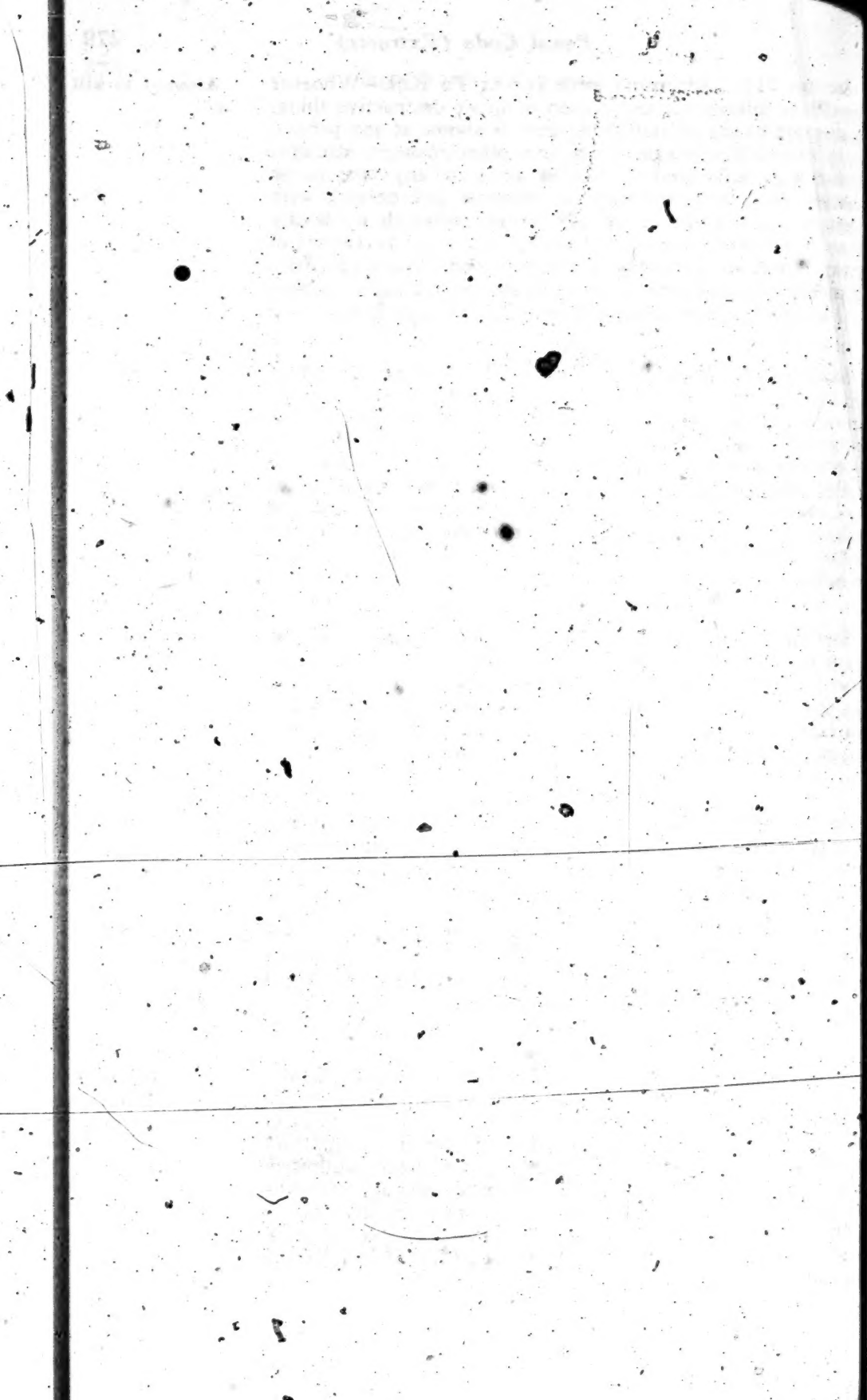
**False statements by accountants**

\* \* \*

**Section 959. Destruction of Notices Posted by State.**—Whoever removes, defaces, covers up, or destroys or causes to be removed, defaced, covered up or destroyed, any placard, sign or poster of any administrative department, board and commission of the State Government, posted under authority of law, shall, upon conviction thereof in a summary proceeding, be sentenced to pay a fine of not more than fifty dollars (\$50), and in default of payment of such fine, and costs, be imprisoned in the county jail one (1) day for each dollar of fine and costs unpaid.

**Destruction of notices**





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THE  
Constitution  
*and*  
General Laws



*Loyal Order  
of Moose*

**OUR MOTTO:**  
**PURITY — AID — PROGRESS**

**THIS Fraternity is founded upon the doctrine of the Fatherhood of God and the Brotherhood of man, and is designed to bind civilized mankind closer together with bonds of fraternal love and to teach great Truths, which have for their purpose the elevation of society.**

**THE AIMS AND PURPOSES OF THE**

***Loyal Order  
of Moose***

**ARE TO INSPIRE LOFTY SENTIMENTS  
RELATIVE TO HUMANITY'S WELFARE**

**RELIGIOUS and political rights are fully recognised by the teachings of the Order, but questions and references of a political or sectarian nature find no place within its sacred precincts, and are forbidden within its portals.**

***"Hold Thou Mooseheart in the  
Hollow of Thy Hand, and let  
Thy blessings rest upon the  
children there."***

THE  
Constitution  
and  
General Laws

*Loyal Order  
of Moose*



REVISED AND CERTIFIED  
1967

IN FORCE AND EFFECT AS OF  
October 1, 1967





# The Constitution of THE SUPREME LODGE OF THE WORLD Loyal Order of Moose

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## Purposes of the Order

The Supreme Lodge of the World, Loyal Order of Moose, a corporation, existing by virtue of the laws of the State of Indiana, does hereby ordain and establish this Constitution.

The principal purposes for which the Supreme Lodge is formed are to act as the common joint agent, and to be the administrative representative and agent of and for that system of fraternal and charitable lodges, chapters, and other units known in the aggregate as the Loyal Order of Moose, in all matters of common and joint interest which may be best administered by one central agency, and which the said lodges and other units, by a vote of their representatives, have and may refer to, or confer upon the Supreme Lodge.

And for such purposes the Supreme Lodge may have, hold, own, purchase, hypothecate, mortgage, sell, and exchange such real and personal property as may be necessary and convenient in the carrying out of the purposes of this Supreme Lodge.

The objects and purposes of said fraternal and charitable lodges, chapters, and other units are to unite in the bonds of fraternity, benevolence, and charity all acceptable white persons of good character; to educate and improve their members and the families of their members, socially, morally, and intellectually; to assist their members and their families in time of need; to aid and assist the aged members of the said lodges, and their wives; to encourage and educate their members in patriotism and obedience to the laws of the country in which such lodges or other units exist, and to encourage tolerance of every kind; to render particular service to orphaned or dependent children by the operation of one or more vocational, educational institutions of the type and character of the institution now called "Mooseheart," and located at Mooseheart, in the State of Illinois; to serve aged members and their wives in a special and an unusual way at one or more institutions of the character and type of the place called "Moosehaven," located at Orange Park, in the State of Florida; to create and maintain foundations, endowment funds, or trust funds, for the purpose of aiding and assisting in carrying on the char-

itable and philanthropic enterprises heretofore mentioned; provided, however, that the corporation may act as trustee in the administration of such trust funds, with authority to use the interest therefrom and, in cases of emergency, the principal as well, for the perpetuation of Mooseheart and Moosehaven or either of them.

## ARTICLE I

### The Supreme Law

The Constitution, the General Laws, and the Rituals shall be the Supreme Law of the Loyal Order of Moose; the laws enacted by the Supreme Lodge for the operation of member lodges and for the management and operation of all other units of the Order within the structure of the Supreme Lodge and subject to the Supreme Law, shall be the law of the member lodges, state and provincial associations, auxiliaries, degrees and other units that may be established from time to time.

The member lodges of the Order are the sole power and authority of the Supreme Lodge. The member lodges reserve unto themselves all powers not herein conferred or delegated.

## ARTICLE II

### Composition of Supreme Lodge

The Supreme Lodge shall be and is composed of the Past Supreme Governors, members of the Supreme Council, the Supreme Officers, the chosen representatives of member lodges to the Supreme Lodge, all Past Governors, and all Supreme Lodge Committeemen; provided, that the aggregate voting power of such members of the Supreme Lodge, other than chosen representatives, shall not exceed thirty-three and one-third per cent of the voting power of the Supreme Lodge when in session. If at any time the number of members, other than chosen representatives, at any meeting of the Supreme Lodge shall exceed one-third of the full vote of said Supreme Lodge, present and entitled to be cast, said other members shall each cast such a fraction of a vote as will make the aggregate vote of such other members equal to one-third of all the votes cast in said Convention.

Voting by proxy is prohibited.

## ARTICLE III

### Representatives

Each member lodge shall be entitled to two representatives, and they shall, in addition to their own votes, cast one total vote for each 300 members, or majority fraction thereof, who are in good standing in that lodge as shown by the approved April 30th quarterly report to the Supreme Secretary. Such representatives, and alternates, shall be elected in the manner provided by the General Laws.

The Supreme Council may, for purposes of repre-

sentation only, create districts to be composed of not more than ten (10) lodges, none of which may be located on the North American Continent, except in Alaska and Yukon Territory, and in the event that such districts are created by the Supreme Council it shall be within the power of such lodges to select a member in good standing upon the rolls of some one of the lodges of said district, which member, when properly accredited, shall be permitted to cast the vote of the membership of all the lodges in good standing constituting the district so represented by him.

#### ARTICLE IV

##### **The Structure of the Order as a Whole**

The Order shall be constituted as follows:

- (a) Supreme Lodge;
- (b) Such member lodges as possess charters legally granted by the Supreme Lodge which have not been suspended, surrendered, or revoked;
- (c) Such units, degrees, auxiliaries (by whatever name called) as may be authorized by the General Laws, or hereafter authorized by the Supreme Lodge.

#### ARTICLE V

##### **Honors of the Order**

The honors of the Order shall be as follows:

- (a) Past Supreme Governor, which shall be attained by every Supreme Governor who shall have been elected as such, or as may be otherwise provided for by law or action of the Supreme Lodge.
- (b) Past Governor, which shall be attained by every Governor who shall have served to the end of his official term, or who shall have had such honor conferred upon him pursuant to the laws of the Order.

#### ARTICLE VI

##### **Degrees of the Order**

The degrees of the Order shall be: (a) Moose; (b) Legion; (c) Fellowship; (d) Pilgrim; and such other degrees as may be authorized by the Supreme Lodge from time to time.

#### ARTICLE VII

##### **Supreme Lodge Officers**

The Supreme Lodge Officers shall be: Director General, Junior Past Supreme Governor, Supreme Governor, Supreme Junior Governor, Supreme Prelate, Supreme Secretary, Supreme Treasurer, General Governor, Director of Membership Enrollment, Comptroller, 8 Supreme Councilmen, 5 Justices of the Supreme Forum, Supreme Sergeant-at-Arms, Supreme Inner Guard, Supreme Outer Guard, together with such additional Officers as may be created by the Supreme Lodge from time to time.

(a) Such Officers shall be elected or appointed in the manner provided by law, and hold their office for the term fixed by law, or until their successors shall have been duly elected or appointed and installed. They shall be Past Governors, in good standing in their respective lodges.

## ARTICLE VIII

### Supreme Government

The Supreme Lodge shall consist of three co-ordinate departments, viz: A. Legislative Department, an Executive Department, a Judicial Department.

(a) The legislative powers of the Order shall be vested in the Supreme Lodge.

(b) The executive powers of the Supreme Lodge shall be vested in the Director General, the Supreme Governor, the Executive Committee, and the Supreme Council.

(c) The Judicial Department shall be composed of the Supreme Forum, the General Governor, and the General Counsel.

## ARTICLE IX

### Supreme Council

The Supreme Council shall consist of thirteen (13) members, five (5) of whom, to-wit: The Director General, the Junior Past Supreme Governor, the Supreme Governor, the Supreme Junior Governor, and the Supreme Prelate, shall be members of said Supreme Council by virtue of their office respectively, and for the term only of said office; the other eight (8) members of said Council shall be elected in the manner provided by the General Laws of the Supreme Lodge.

(a) The Supreme Council shall be the Board of Directors of the corporation known as the Supreme Lodge of the World, Loyal Order of Moose, existing pursuant to the laws of the State of Indiana.

(b) The Directors so constituted shall have full management of the affairs of said corporation in accordance with the laws of the State of Indiana and the By-laws of said corporation.

(c) The Board of Directors shall designate the officers of said corporation.

## ARTICLE X

### Director General

The office of Director General is hereby created. The Supreme Council is hereby authorized and directed to appropriate all necessary moneys for compensation, expenses, and upkeep of said office annually.

## ARTICLE XI

### Adoption—Repeal—Effect, Constitution and General Laws

So much of this Constitution as relates to the Officers of the Supreme Lodge and their terms of office shall take effect upon its adoption.

Upon the adoption of this Constitution and the General Laws they shall supersede all laws heretofore passed by the Supreme Lodge of the Loyal Order of Moose, except as hereinafter provided, and all officers, offices and



authority created or issued pursuant to such laws heretofore in effect are abolished and immediately terminated.

The laws of the Loyal Order of Moose, relating to the member lodges, not in conflict with this Constitution and the General Laws as adopted, shall remain and shall continue in full force and effect; provided that any provision of the laws or other legislative action which shall be in conflict with this Constitution and the General Laws as adopted, to that extent are repealed.

## ARTICLE XII

### **Amendments to the Constitution and General Laws**

Proposed amendments to this Constitution and General Laws must be filed with the Supreme Secretary at least ninety days prior to the Supreme Lodge meeting. Within thirty days after the receipt of any proposed amendment the Supreme Secretary shall send a certified copy of such proposed amendment to all Supreme Lodge Officers and to the Secretary of each member lodge.

If it appears at the meeting of the Supreme Lodge that the said amendment was received by the Supreme Secretary at least 90 days prior to the meeting and the Supreme Secretary did give the required notice, within thirty days, said amendment shall be submitted to the Supreme Lodge Judiciary Committee for its consideration and report to the Supreme Lodge. Upon its report being received, if the amendment is adopted, by a two-thirds vote of the members present and voting, it shall be declared adopted and immediately promulgated and take effect as part of this Constitution and General Laws.

# General Laws Of The Loyal Order of Moose

## Laws of the Supreme Lodge General Provisions

### Chapter 1—Rules and Limitations of Construction

**Sec. 1.1—Rules of Construction**—Be it enacted by the Supreme Lodge, Loyal Order of Moose, that these laws shall be known as the "General Laws" of the Loyal Order of Moose, and unless otherwise especially provided, all amendments and new enactments shall become effective on the first day of October following the adjournment of the annual meeting.

**Sec. 1.2—Effect of Adoption and Repeal**—The adoption of these General Laws, and the repeal of existing laws, shall not affect any offense or act committed or done, or any penalty or forfeiture incurred, or any right established, accrued or accruing, before the General Laws take effect; but when a penalty or forfeiture is mitigated by the General Laws, such provisions may be extended and applied to any conviction or judgment pronounced after said repeal; nor shall such repeal affect any prosecution or charges pending at the time it takes effect for an offense committed under any of the provisions of a law repealed, except that the proceedings therein shall conform, as nearly as practicable, to the provisions of the General Laws.

**Sec. 1.3—Limitation of Action Not Affected**—When a period of time, prescribed in any law repealed, for acquiring a right or barring a remedy, or for other purposes, has begun to run, and the same or a similar limitation is prescribed in the General Laws, the time of limitation shall continue to run, and shall have the like effect, as if the whole period had begun and ended under the operation of the General Laws.

**Sec. 1.4—Prior Valid Obligations Not Affected**—No contractual or other obligation of the Supreme Lodge now existing, or any right or privilege thereunder heretofore entered into or acquired, shall be affected by the General Laws, but shall be recognized as still existing. No cause of action for or against the Supreme Lodge shall be affected by the adoption of the General Laws.

**Sec. 1.5—Authority For Operation of the Fraternity**—The sole authority for the operation of this Fraternity is the Supreme Lodge of the Loyal Order of Moose. All degrees, units, chapters, auxiliaries and all other activities, by whatever name called, in any manner operated and by whatever authority the same are operated, shall be subject at all times to the author-

ity of the Supreme Lodge, as defined in the Constitution and in the General Laws.

Wherever the words "Supreme Lodge" are used and employed in the Constitution or General Laws, all degrees, units, chapters, auxiliaries and all other activities are included and meant to be included in the words "Supreme Lodge." No separate or distinct authority for the operation of any part of the functions of the Supreme Lodge shall be recognized.

## Chapter 2—General Definitions

**Sec. 2.1—Supreme Lodge of the World**—The words "Supreme Lodge of the World, Loyal Order of Moose," shall mean the corporation of that name, organized and existing pursuant to the laws of the State of Indiana, consisting of members whose qualifications are in these laws elsewhere defined, the principal business of which corporation is to act as the common agent of the lodges of the system known in the aggregate as the "Loyal Order of Moose" in such matters as are of common interest to all such lodges, so that there may be uniformity of practice in all things of every lodge to the end that the purposes of each lodge of the said system of lodges, known in the aggregate as the "Loyal Order of Moose" shall be identical with every other in all lodge matters.

When the term "Supreme Lodge" is otherwise used, it shall mean the member lodges of the Order, all the units, degrees, auxiliaries and other bodies functioning under the authority of the Supreme Lodge, now in existence or hereafter created.

**Sec. 2.2—Loyal Order of Moose**—The words "Loyal Order of Moose" as used in these laws shall mean primarily the system of lodges, the representatives and Past Governors which constitute the membership of the Supreme Lodge of the World, Loyal Order of Moose, a corporation, and the legally authorized units of the Order.

**Sec. 2.3—Order**—The word "Order" as used in these laws, and generally as used in the literature of the Supreme Lodge of the World, Loyal Order of Moose, shall mean, in the aggregate, all things existing and conducted by member lodges of the Loyal Order of Moose, including the Supreme Lodge, Legion of the Moose, Women's Auxiliaries and all things in any wise related or appertaining thereto, and does not signify any legal entity of any kind.

**Sec. 2.4—Mooseheart**—The word "Mooseheart" as used herein, shall mean the educational, vocational and philanthropic enterprise created, fostered and maintained by the Loyal Order of Moose, and now located at Mooseheart, Illinois, the title of which stands in the name of the Supreme Lodge of the World, Loyal Order of Moose, a corporation.

Service at Mooseheart for any child shall be provided on the broad basis of fraternity, subject to such

rules and regulations as may be prescribed by the Mooseheart Governors, and such service may be terminated at any time, all in the discretion of the Mooseheart Governors.

**Sec. 2.5—Moosehaven**—The word "Moosehaven," as used herein shall mean the home and philanthropic enterprise created, fostered and maintained by the Loyal Order of Moose, and now located at Moosehaven, Orange Park, Florida, title of which stands in the name of the Supreme Lodge of the World, Loyal Order of Moose, a corporation.

Service at Moosehaven for any eligible member shall be provided on the broad basis of fraternity, under such rules and regulations as may be prescribed by the Moosehaven Governors, and such service may be terminated at any time, all in the discretion of the Moosehaven Governors.

**Sec. 2.6—Moose**—The word "Moose" as used in these laws shall mean the members of lodges of the system known in the aggregate as the Loyal Order of Moose. It may also mean all of the members of lodges in the aggregate.

**Sec. 2.7—Lodge**—The word "Lodge" as used in these laws shall mean, unless otherwise specifically provided, one of the lodges constituting the system known as the Loyal Order of Moose.

**Sec. 2.8—Charter**—The word "Charter" as used in these laws shall mean the certificate issued over the signature of the Supreme Governor and Supreme Secretary, certifying that certain qualified individuals at some given place have complied with the requirements of the laws, for the organization and institution of a lodge, Loyal Order of Moose.

**Sec. 2.9—Annual Meeting or Convention**—The words "Convention" or "Annual Meeting" as used in these laws with reference to the Supreme Lodge shall mean the coming together at stated periods of the members of the Supreme Lodge in a body for a session as such, or a series of sessions on the same or consecutive days for the transaction of such business of the Supreme Lodge as may be properly brought before it.

### **Chapter 3—Seal, Emblems, and Observances**

**Sec. 3.1—Supreme Lodge Seal**—The Supreme Lodge shall have a metal seal, circular in form, with the words, "Supreme Lodge of the World, Loyal Order of Moose," about the periphery, and in the center of the surface thereof shall be the imprint of a Moose head, above which shall be the imprint of the date of the incorporation of the Supreme Lodge.

It shall be kept in the custody of the Supreme Secretary and shall be used by him in authenticating such documents as require his official attestation.

**Sec. 3.3—Moose Emblem**—The head of a moose, in semi-profile position, so arranged that the antlers form the outlines of the letters "L.O.O.M." projecting

through a red circle on which are the words, "Loyal Order of Moose" and the letters "P.A.P." shall be the emblem of the Order.

**Sec. 3.4—Legion Emblem**—The emblem of the Legion of the Moose shall consist of a moose head in semi-profile position so that the antlers form the letters "L. O. O. M.", made of yellow metal mounted upon a white triangle with the letters "F. H. C." in gold thereon, surrounded by a heart-shaped enameled field of red with a narrow gold rim in the outer edge of the heart-shaped field.

**Sec. 3.5—Fellowship Emblem**—The emblem of the Fellowship Degree of the Moose shall consist of a lapel button with the letter "F" in gold, set on a white background, in a gold band circle approximately one-half inch in diameter.

**Sec. 3.6—Pilgrim Emblem**—Such as may be authorized by the Pilgrim Council as it may see fit and proper.

#### Chapter 4—General Provisions

**Sec. 4.1—Certificate of Charter to Lodges**—The Supreme Lodge shall furnish to each lodge legally instituted and in good standing a charter in such form as may be provided by the Supreme Council.

**Sec. 4.2—Granting of Authority to Other Units**—The Supreme Lodge shall furnish to such other units, chapters and degrees of the Order now existing or hereafter created, such authority as is appropriate and in such form as the Supreme Council may determine from time to time; such authority to be subject to the same provisions of law as relate to such restrictions and requirements as in these laws relate to charters of lodges.

**Sec. 4.3—Mileage Allowance to All Officers**—Unless otherwise provided, Supreme Lodge Officers, Committeemen, general and special, when necessarily absent from their homes in the discharge of properly authorized duties in behalf of the Supreme Lodge, shall be reimbursed not to exceed the sum of twenty (\$20.00) dollars per day as allowance for expenses, in addition to mileage or actual transportation expense.

**Sec. 4.4—Honors**—The Supreme Lodge, when assembled, for special services rendered may, by unanimous vote only, confer the honors of Past Supreme Governor upon any Past Governor in good standing of any lodge in good standing.

**Sec. 4.5—Rituals and Degrees**—The principles, aims, and ideals of the Loyal Order of Moose shall be exemplified in Rituals so prepared by the Supreme Council as to be used in various Ceremonies such as enrollment of members, in lodges and other organizations in the name of the Loyal Order of Moose, the services for the dead, dedication of homes, and such other ceremonies as may from time to time be provided for.

**Sec. 4.6—Supplies—Paraphernalia**—Only such sup-



plies, paraphernalia and equipment as are secured through the Supreme Secretary shall be used in the service of enrollment of applicants for membership in lodges, units, degrees, chapters, etc., and only such ceremonies and services shall be performed as may be prescribed by the Ritual.

Only such official supplies and paraphernalia as authorized by the Supreme Council and secured through the Supreme Secretary may be worn or used by members of the lodges, units, degrees, chapters, etc., with the exception of the Pigrim Degree which is under the complete jurisdiction of the Pilgrim Council.

**Sec. 4.7—Allowable Equipment**—The use of any other equipment during the service of enrollment or any other ritualistic service is strictly prohibited, and in particular must no equipment of any kind be used by a lodge, legion, chapter or any unit operating in the name of the Loyal Order of Moose in any service or ceremony in the name of the Loyal Order of Moose, which transmits electrical current, nor shall any candidate for enrollment, or any member of any such units at any time be subjected to any treatment by any appliance transmitting electrical current, nor shall any electrical current of any kind be applied to the person of any applicant for membership in, or any member of any such unit.

## TITLE I

### LEGISLATIVE DEPARTMENT OF THE SUPREME LODGE

#### Chapter 11—Conventions

**Sec. 11.1—Place and Time of Meeting**—A regular Legislative Convention or meeting of the Supreme Lodge shall be held biennially in the odd numbered years at such place and on such dates as determined by the Supreme Council.

**Sec. 11.2—Meeting at Mooseheart**—There shall be held at Mooseheart during each even numbered year a Convention of the Supreme Lodge, at which no legislation shall be enacted, but all other rules and laws of the regular Legislative Convention shall govern; provided, that the Supreme Council may by three-fourths vote of its members declare such Non-legislative Convention of the Supreme Lodge to be an extraordinary Convention for the purpose of considering and passing upon legislation, the character and nature of which shall be designated by the Supreme Council in its declaration, and such designated legislation may be received and acted upon notwithstanding any other provisions of this section; provided further, that the action of the Supreme Council in declaring such Convention an extraordinary Convention shall be taken at least sixty days prior to such meeting of the Supreme

Lodge, and all member lodges given notice of the Council's action and the nature of the legislation to be considered at such extraordinary Convention at least thirty days prior to such meeting.

**Sec. 11.3—Supreme Council May Designate**—The Supreme Council may designate a different place for the holding of the Non-legislative Convention in the even numbered years.

**Sec. 11.4—Quorum of Convention**—One hundred members of the Supreme Lodge shall constitute a quorum for the transaction of business at any duly authorized session and provided an authorized officer shall be present to preside.

**Sec. 11.5—Journal of Proceedings**—A journal of the proceedings of the Supreme Lodge shall be kept and an official record shall be published in such manner as the Supreme Lodge may by law prescribe.

**Sec. 11.6—Order of Business.**—Each meeting of the Supreme Lodge may adopt as its order of business any or all lawful recommendations of the Committee on Rules and Order of Business, but in the event of no such action by the Supreme Lodge, the order of business shall be as follows:

1. Opening Ceremonies;
2. Official Roll Call;
3. Report of Credentials Committee;
4. Obligation of Representatives;
5. Appointment of Committees;
6. Report on Rules of Order;
7. Report of Officers;
8. Nomination of Officers;
9. Election of Officers;
10. Reports of Committees
  - (a) Standing;
  - (b) Special;
11. Report of Resolutions Committee;
12. Judiciary Committee;
13. Unfinished Business;
14. New Business;
15. Good of the Order;
16. Selection of Place of Meeting of Next Legislative Convention;
17. Installation of Officers;
18. Adjournment.

**Sec. 11.7 — Restrictions upon members** — Members shall not, while attending the Supreme Lodge sessions, indulge in personalities or indecorous language, nor upon the political, religious or social affiliations of its members.

A member shall not speak more than once upon the same question until all members have had an opportunity to speak thereon, nor more than twice, without permission of the Supreme Lodge.

Upon being called to order by the Supreme Gover-

nor or duly authorized presiding officer, a member shall cease speaking immediately, be seated, and so remain until the question of order is determined, and he is given permission to proceed.

**Sec. 11.8—Committee of the Whole**—The Supreme Lodge may resolve itself into a "Committee of the Whole" upon the following subjects, and none other: "For the consideration of the laws," "Good of the Order," "Mooseheart," "Moosehaven," and the "Written or Unwritten work of the Order."

**Sec. 11.9—The Decision of the Chair**—The Supreme Governor or other duly authorized presiding officer shall announce the decision of the Supreme Lodge upon all subjects; he may speak upon "points of order" in preference to other members, decide "points of order" without debate, subject, however, to an appeal to the Supreme Lodge by any two members. No member shall speak more than once upon such appeal.

**Sec. 11.10—Majority Vote**—A majority vote shall decide all questions, except as otherwise provided herein.

**Sec. 11.11—Parliamentary Law**—Roberts' Rules of Order shall govern all proceedings of the Supreme Lodge while in session and shall decide all points of order when not otherwise provided for by the General Laws.

#### Chapter 12—Powers of Supreme Lodge

**Sec. 12.1—To Define Offenses and Enforce Penalties**—The Supreme Lodge shall be the judge of the election and qualification of its members. It shall have the power to define offenses of any member or lodge of the Order, make provision for the hearing and trial of charges as may be prescribed by law, and for the enforcement of all judgments or penalties invoked.

**Sec. 12.2—To Define Duties of All Agencies**—It shall have power:

To define the powers and duties of all its officers, boards and committees, or of any individual officer, or body operating in the name of the Supreme Lodge or by its authority.

**Sec. 12.3—To Act as Trustee**—To act as Trustee, or appoint Trustees of funds raised or contributed by the members or lodges of the Order for any purpose and to control the use and distribution of such funds and to establish permanent trust funds for charitable, educational, benevolent, or any other purpose for which the Order is created.

**Sec. 12.4—To Institute Member Lodges**—To provide for the institution of member lodges, the issuance of dispensations and charters thereto, the manner in which the same may be suspended or forfeited, and the laws by which they shall be governed.

**Sec. 12.5—To Create and Operate all Units and Degrees**—To provide for the operation of a women's auxiliary, degrees, units, and any and all other func-

tioning activities for the furtherance of the purposes of the Order.

**Sec. 12.6—To Enact and Amend the General Laws**—To enact all necessary and proper laws for carrying into effect the powers and purposes of the Supreme Lodge or of any department or officer thereof. Such laws shall take effect as of the first day of October following their enactment, unless otherwise provided, and shall be of general application and be called General Laws.

**Chapter 13—Election of Supreme Lodge Officers**

**Sec. 13.1—When Elected**—Subject to the provisions of Article VII of the Constitution, the elective Officers of the Supreme Lodge named in said article shall be elected at the regular annual meeting of the Supreme Lodge for the terms fixed by law.

Provided, no member shall hold more than one elective office at the same time.

Provided further, no member shall hold more than two appointive offices at the same time.

**Sec. 13.2—How Nominated and Elected**—The nomination and election of such Officers shall be as herein provided, and nominations shall be made on the second day of the Convention and the election held on the third day. In all cases of election the votes of the majority of the members of the Supreme Lodge shall be necessary to a choice. In case of a tie, the balloting shall continue until a choice shall have been made; provided, the three candidates receiving the highest number of votes on the first ballot shall be the only candidates voted for on the second ballot, and on a third ballot, if such ballot is necessary, the candidate receiving the lowest vote on the second ballot shall be dropped.

**Sec. 13.3—Terms of Office**—The Supreme Officers, except the Supreme Councilmen, Supreme Forum, Director General, Supreme Secretary, Supreme Treasurer, General Governor, Director of Membership Enrollment, and Comptroller shall be elected for a term of one year.

The Supreme Secretary shall be elected for a term of four years.

The Supreme Treasurer shall be elected for a term of two years.

Members of the Supreme Council shall be elected for a period of four years; provided, however, that four Councilmen shall be elected at each Convention held in the odd numbered years.

The terms of all Supreme Lodge Officers shall commence on the first day of the month following their election or appointment.

**Sec. 13.4—Election Conduct**—No candidate for any Supreme Lodge Office shall be permitted to make a campaign for such election by the distribution of any letters or other written or printed matter of any kind,



in any place, in any manner; and any candidate violating this section or permitting this section to be violated by others in his behalf shall be, upon conviction thereof, disqualified from holding any office during the term for which he was a candidate.

#### **Chapter 14—Appointed Officers of Supreme Lodge.**

**Sec. 14.1—How and By Whom Appointed—**The Director General shall be appointed by the Supreme Council for such term as it may determine. The General Governor and the Director of the Membership Enrollment shall be appointed by the Supreme Council for a term of four years. The Comptroller shall be appointed by the Supreme Council for a term of five years. The Supreme Sergeant-at-Arms, the Supreme Inner Guard, and the Supreme Outer Guard shall be appointed by the Supreme Governor, by and with the consent of the Supreme Council, to serve for one year.

**Section 14.2—Installation of Supreme Lodge Officers—**Supreme Officers shall be installed on the last day of the Convention. If an officer-elect is absent at the time of installation, the Supreme Governor shall have power to install such officer during recess at his convenience.

The Junior Past Supreme Governor shall conduct all installations of Supreme Lodge Officers, provided that in his absence or upon his request, the retiring Supreme Governor may act or appoint any Past Supreme Governor for that purpose.

**Sec. 14.3—Presiding Officer—**In point of authority as presiding officer at any meeting of the Supreme Lodge, such authority shall be in the following order: Supreme Governor, Supreme Junior Governor, Supreme Prelate; provided the presiding officer may yield his gavel to the Director General as he may deem fit and proper, and when so acting, the Director General shall exercise all power of the presiding officer.

#### **Chapter 15—Supreme Lodge Committees and Duties**

**Sec. 15.1—Appointment and Number—**The regular committees of the Supreme Lodge shall be as follows:

(A) Judiciary; (B) Resolutions; (C) Ritual Contest; (D) Credentials; (E) Grievance; (F) Finance; (G) Rules and Order of Business; (H) State of the Order; (I) Special Committees.

Each of the above-named committees shall consist of not less than five nor more than seven members of the Order in good standing in their lodge. All committees shall be appointed by the Supreme Governor with the advice and consent of the Supreme Council. The Judiciary Committee, Resolutions Committee, Ritual Contest Committee, and Credentials Committee, shall be appointed not less than thirty (30) days prior to the date of the Convention at which they are to serve. The other committees shall be appointed within the



last thirty (30) days prior to the convening of the Convention in which they are to serve. The Supreme Governor shall appoint such other committees after the convening of the Convention as the Convention may order from time to time. The appointment of all committees herein referred to shall expire upon adjournment of the Convention.

**Sec. 15.2—Judiciary Committee**—It shall be the duty of the Judiciary Committee carefully to consider and recommend the passage or rejection of all proposed amendments or additions to the Constitution and General Laws before such proposed amendments or additions shall be submitted to any session of the Supreme Lodge.

**Sec. 15.3—Resolutions Committee**—It shall be the duty of the Resolutions Committee carefully to consider and recommend the passage or rejection of all proposed resolutions coming before the Convention, provided that no resolution may be offered from the floor of the Convention until the same has been referred to the Resolutions Committee, and if rejected or adversely recommended, the same may only be presented on the floor upon consent of the Convention being first had and obtained.

**Sec. 15.4—Ritual Contest Committee**—It shall be the duty of the Ritual Contest Committee to conduct ritualistic contests, promulgate rules and regulations for said contests and perform such other duties as the Supreme Council may direct.

**Sec. 15.5—Credentials Committee**—The Credentials Committee shall carefully examine all credentials presented by Supreme Lodge Officers, representatives and Past Governors, or referred to it, and with due diligence, correctly report thereon to the Supreme Lodge.

**Sec. 15.6—Grievance Committee**—The Grievance Committee shall investigate all matters that may be referred to it, and report to the Supreme Lodge, in writing, such recommendations as it may consider proper.

**Sec. 15.7—Finance Committee**—The Finance Committee shall compute and certify in writing the correctness of all claims of the Officers, Committeemen and all others who are, by law, entitled to claim mileage, or per diem expenses, and if in attendance at the Supreme Lodge sessions, and shall pay or cause to be paid from funds received from the Supreme Treasurer such claims and shall immediately return to the Supreme Secretary all funds remaining in its hands after the close of the Convention.

**Sec. 15.8—Civic Affairs Committee**—A standing committee of the Supreme Lodge, consisting of not more than seven members of the Order is hereby designated as the Civic Affairs Committee.

The members of said committee shall be appointed by the Supreme Governor, such appointment to be

ratified and approved by the Supreme Council. Each member shall be appointed for a period of two years.

The Civic Affairs Committee shall supervise and encourage participation by member lodges and their Civic Affairs Committees in community service, and at each Supreme Lodge Convention shall present suitable awards to those lodges whose achievements in such activities have been most outstanding during the preceding year.

**Sec. 15.9—Rules and Order Committee**—The Committee on Rules and Order of Business for the conduct of the meeting of the Supreme Lodge shall designate the time at which the Supreme Lodge sessions shall convene, and shall, as far as possible, act in conjunction with the local committee in the city of which the Convention is being held.

**Sec. 15.10—State of the Order Committee**—Said Committee shall be composed of all Past Supreme Governors, present and in attendance at the meeting of the Supreme Lodge. It shall report on the state of the Order, with such recommendations as it may deem fit and proper.

Said Committee shall also act as a Committee on Necrology.

**Sec. 15.11—Special Committees**—Special Committees shall perform such duties as are defined and authorized at the time of their appointment.

## Chapter 16—Mooseheart Board

**Sec. 16.1—Creation and Duties**—A Board of the Supreme Lodge, consisting of eight (8) members of the Order, one of whom shall be the Director General and one the Supreme Governor, is hereby designated as the Board of Mooseheart Governors.

Said Mooseheart Governors shall have power to administer and govern the affairs of Mooseheart and to do any and all things necessary and proper for the advancement, operation and maintenance of all the work and objects of said institution. They shall organize by selecting such officers as they may deem proper; they may require officers and employees to give bonds and shall provide rules for the regulation and maintenance of said institution.

**Sec. 16.2—Appointment of**—The members of said Board, other than the Director General and Supreme Governor, shall be appointed by the Supreme Governor, said appointments to be ratified and approved by the Supreme Lodge. Each member shall be appointed for a period of three years.

**Sec. 16.3—Terms of Office**—The terms shall be so arranged that the term of two of the six appointed members shall expire each year.

In case of vacancy caused by death, resignation or otherwise, the Supreme Governor shall appoint a mem-

ber to serve for the unexpired term, such appointment to be confirmed by the Supreme Council.

**Sec. 16.4—Qualification of Members**—A member appointed to said Board of Mooseheart Governors shall be required to be a member of the Supreme Lodge in good standing.

**Sec. 16.5—Admission Regulations & Rules**—The Mooseheart Governors shall make such rules and regulations as to them may deem proper for the admission of children to Mooseheart, and prescribe the terms and conditions under which any child may reside at Mooseheart or for the employment there of the mother of any child residing at Mooseheart, and for the discontinuing of the residence of any child or employment of its mother at Mooseheart, and shall have complete authority to determine in each case who shall be admitted to Mooseheart, the conditions under which any person may reside at Mooseheart, and may terminate the residence and/or employment at Mooseheart of any person at any time. They shall determine the terms and conditions of contracts to be entered into between Mooseheart and any surviving parent or legally appointed guardian of any child for the admission to Mooseheart of such child, for the conditions of its residence at Mooseheart, and for the termination of the residence at Mooseheart of any child. They shall require the appointment by a competent court of a guardian of the person of any child seeking admission to Mooseheart unless there is a surviving parent to act for the child.

#### Chapter 17—Moosehaven Board

**Sec. 17.1—Creation and Qualification**—A Board consisting of eight (8) members of the Supreme Lodge, one of whom shall be the Director General and one the Supreme Governor, is hereby designated as the Board of Moosehaven Governors.

**Sec. 17.2—Appointment of**—The members of said Board, other than the Director General and Supreme Governor, shall be appointed by the Supreme Governor, said appointment to be ratified and approved by the Supreme Lodge; each member to be appointed for a period of two years.

**Sec. 17.3—Terms of Office**—The terms shall be so arranged that the term of three of the six appointed members of said Board shall expire each year.

In case of a vacancy caused by death, resignation, or otherwise, the Supreme Governor shall appoint a member for the unexpired term, said appointment to be confirmed by the Supreme Council.

**Sec. 17.4—Qualification of Members**—A member appointed to said Board of Moosehaven Governors shall be required to be a member of the Supreme Lodge in good standing.

**Sec. 17.5—Duties of Board Members**—The Moosehaven Governors shall have power to administer the affairs of Moosehaven, and to do any and all things

necessary and proper for the advancement, operation and maintenance of the work and objects of Moosehaven, subject to all other provisions of the Laws. Said Board may organize by selecting such officers as they may deem proper; they may require officers and employees to give bond and to promulgate such rules and regulations as are found necessary for the maintenance and operation of the institution.

**Sec. 17.6—Admission Regulations & Rules—**The Moosehaven Governors shall make such rules and regulations as may be deemed proper for the admission of members to Moosehaven, and prescribe the terms and conditions under which members and their wives or widows may be admitted, and fix and establish the requirements covering the admission of members to Moosehaven. They shall determine the terms and conditions of contracts to be entered into between Moosehaven and any member or person residing there, and for the termination of the residence at Moosehaven of any person.

When an applicant is admitted to Moosehaven, he shall be presented an annual non-beneficiary dues receipt by his lodge during the continuance of his residence at Moosehaven.

**Sec. 17.7—Moosehaven Service Eligibility—**In order to be qualified to apply for the benefits of the service of the Order for the aged, a member shall have been continuously in good standing in the Order for a period of at least fifteen years immediately preceding his or her application for such service; and shall be not less than sixty-five years of age at the time of filing his or her application for aged service. The eligibility of widows for the aged service of the Order shall be that of their husbands at the time of the death of the husband. These limitations may be suspended by the constituted authorities dealing with these services in any case whenever in their judgment an emergency exists.

#### **Chapter 18—Mooseheart-Moosehaven Endowment Fund Board**

**Sec. 18.1—Creation—**A Board consisting of seven (7) members of the Supreme Lodge, one of whom shall be the Director General, is hereby designated as the Mooseheart-Moosehaven Endowment Fund Board.

The members of said Board, other than the Director General, shall be appointed by the Supreme Governor, said appointment to be ratified and approved by the Supreme Council. Each member shall be appointed for a term of three years.

**Sec. 18.2—Terms of Members—**The terms shall be so arranged that the term of two of the six appointed members shall expire each year.

In case of vacancy caused by death, resignation, or otherwise, the Supreme Governor shall appoint a member to serve for the unexpired term, such appointment to be confirmed by the Supreme Council.



**Sec. 18.3—Duties of Members**—The Mooseheart-Moosehaven Endowment Fund Board shall encourage and administer, consistent with the established policy of the Supreme Lodge, the Mooseheart and Moosehaven Endowment Funds created and maintained for the charitable and philanthropic enterprises of the Order.

**Sec. 18.4—Advisory Committee**—The Supreme Governor may appoint an Advisory Committee to the Mooseheart-Moosehaven Endowment Fund Board in such number as the Supreme Council may from time to time determine. Each member shall be appointed for a term of three years, said appointments to be ratified and approved by the Supreme Council.

## TITLE II

### EXECUTIVE DEPARTMENT OF SUPREME LODGE

#### Chapter 21—Director General

The Director General shall have general power to direct and supervise all activities and enterprises of the Order everywhere. He shall be furnished with any and all information covering the operations and acts of all Supreme Lodge Officers, all Boards, Committees, as well as all units, degrees, chapters, and auxiliaries now existing or hereafter created; and with all information relative to the acts or conduct of any individual or group acting or operating by authority of the Supreme Lodge. The Director General, by virtue of his office, shall serve as a member of the Supreme Council as provided in Article IX of the Constitution. He shall have the right to appear at any meeting of any board or committee of the Supreme Lodge, and be heard on any relative matter.

#### Chapter 22—Supreme Governor

**Sec. 22.1—Duties**—The Supreme Governor shall preside at and enforce all rules at every session of the Supreme Lodge, and preserve order therein.

**Sec. 22.2—Call Council Meetings**—He may call such meetings of the Supreme Council as he may deem proper in the interests of the Order and as the business of the Order necessitates.

**Sec. 22.3—Attend any Occasions**—He shall attend such meetings and social sessions of the lodges and other gatherings held in the name of the Order as may be practical, and such other occasions and functions as the Supreme Council may determine and plan, and shall act as the accredited representative of the Order at such gatherings.

**Sec. 22.4—Delegation of Authority**—He shall have the right to be present at a meeting of any other body of the Order as he may choose. He shall have the right to address such bodies on matters pertaining to the Order and to advise such bodies on the general condition of the Order. He may designate any other Supreme Lodge officer to make visits to lodges or to appear at any functions of the lodges as his representative.



**Sec. 22.5—Report to Convention—**He shall submit to the Supreme Lodge at each regular meeting a report covering his activities during its recess, together with such recommendations as he may deem proper.

**Sec. 22.6—Appointments of—**He shall appoint the members of such committees, boards, bodies, and other officers and appointees as are provided for in the General Laws, by and with the consent of the Supreme Council, and fill vacancies in the same manner.

**Sec. 22.7—Succession of—**In case of the removal from office by death or resignation of the Supreme Governor, or should a vacancy occur in that office for any reason, the Supreme Junior Governor shall succeed to the office of the Supreme Governor.

### **Chapter 23—Supreme Junior Governor**

**Sec. 23.1—Duties—**The Supreme Junior Governor shall aid the Supreme Governor and other Supreme Lodge Officers in opening and closing each session of the Supreme Lodge, and at all times during the meeting shall assist and support them in preserving order.

**Sec. 23.2—When to Preside—**He shall preside at sessions of the Supreme Lodge in the absence of the Supreme Governor and represent the Supreme Governor before any committee, board, or department of the Order upon request of the Supreme Governor, or in his absence.

**Sec. 23.3—Succession of—**In case a vacancy occurs in the office of Supreme Governor, after such vacancy has been declared by the Supreme Council, he shall assume and perform the duties of the Supreme Governor for the balance of the term of that office.

**Sec. 23.4—Special Services—**He shall serve in any additional capacity the Supreme Council may authorize. He shall represent the Supreme Lodge and Supreme Council in the operation of any of the functions of the Supreme Lodge when and as designated by the Supreme Council.

### **Chapter 24—Supreme Prelate**

**Sec. 24.1—Duties—**He shall conduct the devotional exercises of the Supreme Lodge and such devotional exercises as are performed in the Supreme Lodge meetings.

He shall serve as a member of the Supreme Council and perform such duties as the Supreme Council may direct.

He shall represent the Supreme Lodge and the Supreme Council in any work of the Supreme Lodge as may be directed by the Supreme Council.

**Sec. 24.2—Succession of—**In case a vacancy occurs in the office of Supreme Junior Governor, after such vacancy has been declared by the Supreme Council, he shall assume and perform the duties of the Supreme Junior Governor for the balance of the term of that office. Whereupon, the Supreme Council shall appoint

a qualified member as Supreme Prelate for the unexpired term.

#### **Chapter 25—Supreme Council**

**Sec. 25.1—General Duties**—In addition to the duties defined in the Constitution, the Supreme Council shall be the general fiscal agent of the Supreme Lodge, and unless otherwise provided, shall have general authority over all funds and property belonging to the Supreme Lodge. When the Supreme Lodge is not in session, the Supreme Council shall be the highest authority in all matters having to do with the operation and management of the Supreme Lodge.

**Sec. 25.2—Specific Powers**—It shall determine the amount of all bonds given to the Order for the faithful performance of duty, except as otherwise provided.

It shall purchase, or supervise the purchase of, all supplies for the Order or any of its departments, units, degrees, auxiliaries, or any individual or authority operating under the authority of the Supreme Lodge.

(a) It shall have power to provide for, in due form, amendments or additions to the Articles of Incorporation.

(b) It shall have supervisory power over all Officers of the Supreme Lodge in the discharge of their duties; determine which officers, appointees, or employees shall be compensated; determine the basis of compensation; fix the amount thereof; make provision for expenses to be allowed such officers, appointees, or employees, and is authorized to establish and maintain a retirement or pension plan for officers, appointees, or employees of the Order.

(c) It shall have power to suspend elective officers of the Supreme Lodge pending the hearing of any charges against them, and to remove appointive officers and employees of the Supreme Lodge. Whenever it shall exercise its powers to suspend or remove any Supreme Lodge Officer, the grounds of such suspension shall be stated and filed with the Supreme Forum and shall constitute a charge against said Officer to be disposed of as provided for in the General Laws.

(d) It shall promulgate rituals, laws, rules and regulations for the operation of and retain at all times supervisory control of all units, auxiliaries and degrees of the Order. It may, however, set up boards or agencies for such purposes, provided that the powers and duties of any such boards or agencies appointed shall be clearly and distinctly defined and strictly limited to administrative and ministerial character.

(e) All rituals employed by such bodies must first be approved by the Supreme Council, provided, that in the granting of the Pilgrim Degree the ritual employed therein shall be under the exclusive jurisdiction of the Pilgrim Council.

(f) All publications and all publicity and promo-

tional activities of the Supreme Lodge shall be under the authority of the Supreme Council, provided, however, it may appoint a board or committee to carry on such activities and to that end may authorize the employment of professional and trained assistants, and provided further, that no contract shall be entered into in connection therewith except by expressed authority of the Supreme Council.

(g) It shall set up a budget system and allocate funds for the operation of the Supreme Lodge and all agencies, departments, offices, and authorities operating with Supreme Lodge funds, and require strict adherence to such budget. It shall have the power to revise the budget, but no change or alteration of said budget shall be made except by its action.

(h) Said Supreme Council shall create such committees as are authorized, or directed by the Supreme Lodge and may itself create special committees for carrying out any special or general work of the Order. It shall perform and carry out all directions of the Supreme Lodge and exercise all the power and authority conferred upon it by the Supreme Lodge.

(i) It shall, at each regular meeting of the Supreme Lodge, submit a report of all its acts and performances, in detail, which said report shall be printed in the Convention Proceedings and made available to all member lodges of the Order.

**Sec. 25.3—Executive Committee to Serve—**An Executive Committee of three members of the Supreme Lodge shall be appointed by the Supreme Council and shall hold office at the pleasure of the Supreme Council. Any vacancies occurring by death, resignation, or otherwise shall be filled as herein provided for appointment. The Executive Committee shall exercise all of the powers of the Supreme Council when the latter is not in session, except the power to appropriate funds. It shall report fully on all its actions during the interim between Supreme Council meetings, and its actions shall be in full force and effect unless modified or abrogated by the Supreme Council at its next meeting following such action.

#### **Chapter 26—Supreme Secretary**

**Sec. 26.1—Duties—**He shall perform the duties of Secretary for the corporation known as, "The Supreme Lodge of the World, Loyal Order of Moose" and maintain correct corporate records of said corporation.

(a) The Supreme Secretary shall perform all duties as are usually performed by secretaries of similar corporations as the Supreme Lodge of the World, Loyal Order of Moose.

(b) He shall attend all meetings of the Supreme Lodge and of all other similar bodies of the Supreme Lodge. He shall give due and proper notice of all meetings of the Supreme Lodge,

the Supreme Council, and other similar bodies. He shall keep a true and correct record of the action of the Supreme Lodge and record the same in books of record.

- (c) He shall have custody of the seal of the Supreme Lodge, shall sign his name in his official capacity to all documents requiring the signature of the Supreme Secretary or as directed by the Supreme Council or other competent authority, and affix the seal of the Supreme Lodge thereto. He shall perform his duties under the general supervision of the Supreme Council, pursuant to the laws of the Supreme Lodge.
- (d) He shall appoint such deputies, assistants and clerks as the Supreme Lodge or the Supreme Council may approve from time to time. He shall collect all moneys in accordance with the laws of the Order and the directions of the Supreme Council, and keep a true and correct record of the same.
- (e) He shall conduct all official correspondence of the Supreme Lodge.
- (f) He shall keep the Supreme Council informed at all times of the condition of the member lodges.
- (g) He shall act as the representative of the Supreme Lodge or of the Supreme Council in its relations with the member lodges, as may be directed by the Supreme Council.
- (h) He shall perform any and all other duties as may be directed by the Supreme Lodge or the Supreme Council from time to time.
- (i) He shall keep a true and accurate account of all money due the Supreme Lodge from any member lodge, individual, department, unit, degree, or any other body or individual acting under the authority of the Supreme Lodge.
- (j) He shall make quarterly reports of such accounts to the Supreme Council.
- (k) He shall fix the amount of all bonds of the officers of each member lodge of the Order.
- (l) Immediately upon installation, he shall give bond in a sum to be fixed by the Supreme Council for the faithful performance of his duties.
- (m) He shall adopt a system of bookkeeping and recording covering the duties of his office, as may be directed or approved by the Supreme Council.
- (n) He shall perform such duties as are authorized for the Supreme Secretary in the signing of official warrants and approving requisitions.

**Sec. 26.2—Appointment of Auditors—**The Supreme Secretary, with the advice and consent of the Supreme Council, shall appoint such auditors as in his judgment



may be necessary, who shall operate under his general supervision. Such auditors shall have power to demand and receive at any time from any lodge or any of its officers, any papers, books, records, files or evidence of indebtedness or other property for the purpose of fully inspecting and auditing the accounts and affairs of any such lodge, and each officer or member thereof shall immediately deliver to the Supreme Secretary or any auditor duly authorized by him, all books, records, files and papers of the lodge. In the event any officer or member of a lodge shall fail to deliver upon demand any such papers, books, records, files or other things to the Supreme Secretary, or his duly authorized auditor or other authorized representative, he may be suspended by the Supreme Secretary or such auditor or representative, who shall communicate the reasons therefor immediately to the General Governor. Any officer or member so suspended shall no longer perform the duties of any office or function in the lodge, and the Supreme Secretary or a duly authorized auditor shall immediately appoint a member or members of the lodge to fill such office until the suspension of the officer or member shall have been approved or revoked. ~~The report of the facts to the General Governor on~~ which such suspension is made shall constitute a charge against the member and the General Governor shall at once proceed to hear such charges as by law provided. In the event the Supreme Secretary or any duly authorized auditor shall discover any discrepancies or irregularities in the accounts of any officer or member of a lodge, due to incompetency, dishonesty, immorality, or any other cause, he may immediately suspend such officer or member and proceed as hereinabove stated in the event of the refusal of such officer or member to deliver all books and other things on demand.

**Sec. 26.3—Duties of Auditors—**Each auditor shall make such regular or special audits of a lodge or any of its officers as he may from time to time be directed or instructed by the Supreme Secretary to do. The expense of such audits shall be charged against the lodge at a rate to be determined by the Supreme Council of not exceeding twenty-five dollars (\$25.00) per day. All auditors shall perform their duties under the immediate supervision and direction of the Supreme Secretary and shall travel from lodge to lodge for that purpose, or be at the home office of the Supreme Secretary. They shall carry such credentials as the Supreme Secretary may issue to them, which credentials shall be recognized by all lodges, their officers or members, and such auditors shall make such reports to the Supreme Secretary of their work as he may from time to time require. For the faithful performance of his duties each auditor shall receive such compensation as the Supreme Council may from time to time determine.



and when traveling in the performance of his duties, in addition to his salary, be reimbursed his necessary expenses. Each auditor shall give such bond for the faithful performance of his duties as the Supreme Secretary may from time to time determine.

**Sec. 26.4—Authority to Supervise all Records—**The Supreme Secretary is hereby granted full power and authority to audit the books and records of any and all units, degrees, or auxiliaries, acting under the authority of the Supreme Lodge, in his discretion, and make due report thereof to the Supreme Council, with like power and authority as provided covering his dealings with member lodges.

**Sec. 26.5—Quarterly Reports to Council—**He shall report quarterly to the Supreme Council any unpaid charges of member lodges or any other department, unit, degree, chapter, or auxiliary, or individual acting under the authority of the Supreme Lodge; but no liquidation or settlement of such charges or accounts shall be entered into or made by the Supreme Secretary except by and with the consent and under the direction of the Supreme Council.

**Sec. 26.6—Annual Report to Convention—**He shall make an annual report to the Supreme Lodge, showing transactions between the Supreme Lodge and member lodges, receipts of money by the Supreme Lodge and the sources thereof, and such other information relative to the conditions of the Order, with such recommendations as he considers advisable. Said report shall be comprehensive, full and completely informative, and set up in such manner as to be readily understood.

#### **Chapter 27—Membership Enrollment Activities**

**Sec. 27.1—Duties and General Powers of Director—**The Director of Membership Enrollment shall perform such duties as are required of him by the Laws and as the Supreme Council may from time to time require and prescribe. He shall be in charge of the Membership Enrollment Department and shall appoint such field representatives, assistants and clerks as the Supreme Council may approve. He shall direct and supervise the institution of member lodges and the enrollment of members into the Order.

He shall make reports to the Supreme Council or the Supreme Lodge as the Supreme Council may from time to time require.

**Sec. 27.2—Membership Activities Committee—**A Membership Activities Committee of four (4) members, one of whom shall be the Director General, shall be appointed by the Supreme Council and shall hold office at the pleasure of the Supreme Council. The Membership Activities Committee shall perform such duties as the Supreme Council may from time to time require and prescribe and shall make reports to the Supreme Council as the Supreme Council may from time to time require.

## Chapter 28—Finance Department

**Sec. 28.1—Supreme Treasurer—**The Supreme Treasurer shall receive all funds coming to him from any source on behalf of the Supreme Lodge, giving proper receipts therefor, and deposit the same in the name of the Supreme Lodge, in such depository or depositories as may be designated by the Supreme Council, and he shall faithfully administer all such moneys and all the funds deposited to his account or credit by the Supreme Secretary as provided by the laws of the Order. He shall sign all warrants drawn upon the treasury which are properly issued by the Supreme Secretary and approved by the Comptroller.

**Sec. 28.2—Bond of Supreme Treasurer—**Before receiving any of the funds of the Supreme Lodge from any source, he shall furnish, subject to the approval of the Supreme Council, an acceptable bond, in such sum as the Supreme Council may from time to time require, conditioned upon the faithful performance of his duties.

Provided, that said bond may at any time be increased by the Supreme Council to an amount in excess of all cash and the value of all other property in his possession.

**Sec. 28.3—Income of Supreme Lodge—**All interest and other incomes arising from funds deposited by the Supreme Treasurer shall be the property of the Supreme Lodge, and shall be credited as such to its account in his report.

**Sec. 28.4—Examination of Books—**He shall, without delay, at any time upon request of the Supreme Council, present all his books and papers to that body for examination.

**Sec. 28.5—Comptroller—**He shall perform the duties of Comptroller of the Supreme Lodge of the World, Loyal Order of Moose, and shall be under the direction and responsible to the Supreme Council.

(a) **Approve Bills:** No bills, accounts or payrolls shall be paid or any money whatever withdrawn from Supreme Lodge funds without the prior approval of the Comptroller. His decision as to the correctness and legality of any bill, claim or other proposed withdrawal of funds, shall be final, and in case of his rejection of any bill or claim he shall immediately advise the Supreme Secretary, giving his reasons for rejection. For the purpose of expediting the business of the various departments, units, degrees, auxiliaries and other bodies operating under the authority of the Supreme Lodge, the Supreme Council may designate a disbursing officer to handle the fixed charges, expenses, salaries and expenditures of similar character, provided that the handling of such funds shall be accounted for to the Comptroller under such rules as the Supreme Council may promulgate for that purpose.

(b) **Audit Books:** When so directed by the Supreme Council, the Comptroller is granted power and authority to audit the books and records of any and all elected or appointed officers or employees of the Supreme Lodge, and all departments, degrees, or auxiliaries, acting under the authority of the Supreme Lodge, and make due report thereof to the Supreme Council.

(c) **Keep Records:** The Comptroller shall keep a complete set of records covering all transactions coming under his authority. He shall make periodic reports covering the operations of his office to the Supreme Council as may be directed.

(d) **Prepare Budgets:** The Comptroller shall, upon the direction of the Supreme Council, prepare annually detailed budgets covering anticipated receipts and expenditures of the Supreme Lodge to be made during the succeeding year. Said budget shall include the anticipated receipts and expenditures of all units, degrees, auxiliaries and all other bodies and functions operating under the authority of the Supreme Lodge.

(e) **Appoint Assistants:** He may appoint and employ such assistants as are necessary for the operation of his office as may be authorized by the Supreme Council.

#### Chapter 29—Other Executive Offices

**Sec. 29.1 — Supreme Sergeant-at-Arms —** The Supreme Sergeant-at-Arms shall assist the Supreme Governor in preserving order at each session of the Supreme Lodge. He shall ascertain whether or not each person in attendance is entitled to a seat in the session before the transaction of any business of the Supreme Lodge. He shall perform all other duties required of him by the laws of the Order and by the orders of the Supreme Governor.

**Sec. 29.2—Supreme Inner Guard—**The Supreme Inner Guard shall have charge of the inner door of the hall in which the Supreme Lodge holds its sessions. He shall carefully and vigilantly guard the Supreme Lodge from intrusion; shall allow no one to enter the Supreme Lodge unless duly qualified, and shall perform such other duties in connection with his office as are required by the laws of the Order and the direction of the Supreme Governor.

**Sec. 29.3 — Supreme Outer Guard —** The Supreme Outer Guard shall have charge of the outer doors and anterooms of the hall in which the Supreme Lodge holds its sessions. He shall perform such duties as are required by the laws of the Order and as the Supreme Governor may direct.

**Sec. 29.4—Deputy Supreme Governors—**The Supreme Governor, with the approval of the Supreme Council, shall appoint such Deputy Supreme Governors as he may determine. They shall see that all laws are

obeyed. It shall be the duty of such Deputies to visit the lodges in their respective districts when duly authorized. They shall immediately after any official visit send written report thereof to the General Governor and make such recommendations and suggestions as they deem for the best interests of the Order.

All Deputies shall send a written report to the General Governor before the annual meeting of the Supreme Lodge, with such recommendations concerning the lodges and their districts as they think proper or necessary. Such Deputies as the Supreme Governor may authorize and direct shall attend sessions of the Supreme Lodge.

They shall have the power to inspect, demand, and take possession of all books, papers and lodge property of any lodge in their district, when so instructed by the Supreme Governor or General Governor; and it is hereby made the duty of all lodge officers to submit the same upon the request of such Deputy.

They shall be commissioned by the Supreme Governor from among the Past Governors of the Order. They shall be accorded all privileges and courtesies of Supreme Lodge Officers. Upon the completion of the term for which a Deputy Supreme Governor was appointed, he shall be determined to be a Past Deputy Supreme Governor and shall be recognized as such.

### TITLE III

#### JUDICIAL DEPARTMENT OF SUPREME LODGE

##### Chapter 31—General Governor

**Sec. 31.1—General Duties**—The General Governor shall perform such duties as are required of him by the laws, and as the Supreme Council may from time to time require and prescribe. He shall pass upon proposed by-laws of lodges and approve same when consistent with the laws of the Order. He shall hear and decide such complaints and questions of law as are submitted to him in writing by lodges or officers thereof, and his decisions shall be final and in full effect unless and until reversed upon appeal as provided by the General Laws. He shall pass upon all requests for dispensations in accordance with the General Laws.

**Sec. 31.2—Specific Authority**—He shall have power and authority to suspend the charter of a lodge when, in his judgment, such action is necessary, and, by and with the consent of the Supreme Council, may revoke charters whenever the facts justify such action. He shall have authority to suspend any officer of a lodge for incompetence or improper conduct as an officer, as a Moose, or as a gentleman, pending an investigation of the accounts of such officer, of his actions or conduct, and to appoint a successor to act during the time of such suspension. He shall have authority to suspend for improper conduct as a Moose or as a gentleman, a member of any lodge or other unit of the Order, pend-

ing an investigation of the actions or conduct of such member. Such suspension shall continue until the final disposition of the matter;

Provided, that whenever time and circumstances permit, the member, officer, or lodge involved in the matters in this section referred to, shall be given an opportunity to show cause before final action of the General Governor.

**Sec. 31.3—Reports and Records**—He shall keep a record of his rulings and decisions and shall make such reports to the Supreme Council or the Supreme Lodge, as the Supreme Council may from time to time require.

**Sec. 31.4—Power to Recruit Lodges**—When, in the judgment of the General Governor, conditions require it, he may direct any lodge which has not made any special effort to recruit its membership for a period of three months, to open its charter and to cause such lodge to make an agreement with the Membership Enrollment Department for the purpose of recruiting said lodge at an enrollment fee to be determined by the General Governor; which in no event shall be less than \$10.00 unless upon special showing in exceptional cases with the consent of the Supreme Council a lesser fee is agreed upon.

**Sec. 31.5—Supervision Over Lodge Property**—Whenever he deems it necessary, he may, in person, or by deputy, receive and take possession of the books and property of any lodge of the Order for inspection, and upon such demand, it shall be the duty of all lodge officers or members immediately to deliver over all books, papers, and records to the General Governor or his representative, and in his discretion he may have the same audited at the expense of the lodge.

## Chapter 32—General Counsel

**Sec. 32.1—Employment**—The Supreme Council shall employ for a period of time to be specified a licensed and practicing attorney to be known as the General Counsel.

**Sec. 32.2—Duties**—He shall represent the Supreme Lodge and all its units, degrees, boards, and bodies in all litigation. He shall advise and consult with the Supreme Lodge, its governing bodies and board when requested, and render such legal opinions pertaining to the affairs of the Order as they may request.

He may appoint, with the approval of the Supreme Council, assistants to be compensated in an amount to be fixed by the Supreme Council. Such assistants to be allowed traveling and transportation expenses when engaged in the business of the Supreme Lodge.

The General Counsel and such assistants shall perform such other and further duties as the Supreme Council may direct from time to time.

## Chapter 33—Supreme Forum

**Sec. 33.1—Appointment and Composition**—The Su-



preme Forum shall consist of five (5) members to be designated as Justices.

The Justices of the Supreme Forum shall be appointed for a term of five years by the Supreme Governor with the consent of the Supreme Council. Any vacancy shall be filled by appointment for the unexpired term in the same manner. The member whose term shall first expire shall be the Chief Justice of the Supreme Forum. The retiring Supreme Governor shall appoint one Justice of the Supreme Forum at each annual meeting of the Supreme Lodge.

**Sec. 33.2—Duties**—The Supreme Secretary shall be Clerk of the Supreme Forum. He shall keep a complete and correct docket of all matters and shall execute the mandates of the Supreme Forum.

**Sec. 33.3—Meetings**—The Justices of the Supreme Forum shall meet in the city where and during the time the Supreme Lodge Convention is in session and shall formulate a report signed by each member of the Supreme Forum present at such meeting, and file same with the Supreme Secretary. Other meetings may be held at the call of either the Chief Justice or a majority of the members of the Supreme Forum. Meetings shall be held at the time and place designated in the notice thereof. The Chief Justice shall preside at each meeting of the Supreme Forum, except in such cases as he may designate some other member of the Supreme Forum to preside.

**Sec. 33.4—Quorum**—A majority of Justices shall constitute a quorum and shall sit at the hearings of all matters.

**Sec. 33.5 — Jurisdiction** — The Supreme Forum shall have original jurisdiction in all matters involving charges against a Supreme Lodge Officer or a representative to the Supreme Lodge.

**Sec. 33.6—Authority**—The Supreme Forum shall be the highest judicial tribunal of the Order, and is vested with all the authority set forth herein, and such other authority as may be necessary to enable the discharge of all duties incumbent upon it.

**Sec. 33.7 — Appellate Jurisdiction** — The Supreme Forum shall have appellate jurisdiction in all cases of appeal or reference from the decisions, orders, or judgments of the General Governor or Supreme Council; and upon such appeal or reference, any decision, order, or judgment made by the Supreme Forum shall be conclusive and final.

**Sec. 33.8—General Powers**—The Supreme Forum has power:

(a) To prescribe rules governing the practice and hearing of matters before the Supreme Forum.

(b) To issue a subpoena requiring the attendance of a person to testify in a proceeding pending before that tribunal; and to fix the compensation to be paid

such person; and to direct the payment of such compensation from Supreme Lodge funds.

(c) To administer an oath or affirmation to a witness in the exercise of the powers and duties of the Supreme Forum.

(d) To affirm, modify, suspend, or revoke any penalty inflicted upon any member lodge or member of the Order, by the Supreme or member lodge or any officer thereof.

(e) To make such decisions, orders, or judgment and to inflict such fines, suspensions, expulsions or other penalties, as the Supreme Forum may deem necessary or proper.

(f) To do all things necessary to carry into effect the powers, duties and jurisdiction of the Supreme Forum.

**Sec. 33.9—Procedure of Hearings**—All matters except appeals shall be commenced by the filing with the Clerk of the Supreme Forum, of a verified petition and seven copies thereof. The defendant's or other adverse party's appearance must be made by filing an answer and seven copies thereof with the Clerk within twenty days after service of the petition upon the defendant or other adverse party.

Within twenty days after service of the answer upon the petitioner such party may file a reply and seven copies thereof with the Clerk. Within twenty days after a petition, answer or reply has been filed with the Clerk, any pleadings may be once amended of course. Upon written application, amended or supplemental pleadings may be permitted at any time before hearing by order of the Supreme Forum.

The Supreme Forum at any time, not less than twenty days before the opening of the hearing, upon the written application of any party, may direct any party to the proceeding to file with the Clerk a bill of particulars concerning any matter at issue, and upon failure to file such bill of particulars the Supreme Forum may preclude such party from giving evidence of the fact or facts of his allegations of which particulars have not been filed. A motion may be made by any party at any time to dismiss the proceeding or any pleading because of lack of jurisdiction, insufficiency in law or fact, or otherwise. The Forum may extend, by order, the time for filing any pleading.

The Clerk of the Supreme Forum at the time of the filing of each pleading shall forthwith serve copies thereof upon the Justices of the Supreme Forum and upon all parties directly involved in the proceeding. Upon failure of the defendant or other adverse party to appear or answer, or upon the joinder of issue and the expiration of the foregoing period of time, or upon the filing of a petition in any matter on appeal, or in an ex parte proceeding, the Chief Justice shall designate a date and place for the hearing of the matter

referred to in the petition so filed. The Clerk shall thereupon give not less than twenty days notice of such hearing to the Justices and to all persons directly involved in the proceeding.

The Supreme Forum may permit any party to file briefs or written arguments at any stage of the proceeding. Any party may appear in person or by counsel. Upon default of any party, the Supreme Forum shall proceed to hear the proof of the party properly before the Supreme Forum. A decision in each matter coming before the Supreme Forum shall be made in writing, signed by not less than a majority of the Justices, and filed with the Clerk.

**Sec. 33.10—Rules of Evidence**—The Supreme Forum shall be the judge of both law and fact. The Supreme Forum shall adopt and apply the rules of evidence in use in the courts of record of the State of Illinois at the time of hearing.

**Sec. 33.11—Rules of Pleading and Service**—All papers served or required to be filed, shall be written, typewritten, or printed plainly and legibly in black ink, in the English language, on durable white paper of the usual legal cap or letter size; only legible copies may be served and filed. Service of any papers shall be by personal delivery or United States mail, or otherwise when directed by an order of the Supreme Forum.

The petition shall state facts sufficiently clearly to show the nature of the claim and the prayer of the petitioner. The burden of proof shall be upon the petitioner and he shall establish his cause by a fair preponderance of evidence.

**Sec. 33.12—Procedure of Appeals**—Any party interested in any decision, order or judgment mentioned in Sec. 33.7 may appeal from such decision, order or judgment to the Supreme Forum.

(a) The party appealing shall file with the Supreme Secretary, the Clerk of the Supreme Forum, a notice that he appeals from the decision, order or judgment; such notice to be filed not more than thirty (30) days after such decision, order or judgment appealed from has been made or entered;

(b) Such notice of appeal to be accompanied by statement setting forth briefly the questions involved and in what manner the decision, order or judgment is in error. Any error not specified in such statement will not be considered by the Supreme Forum.

(c) Seven (7) copies of the notice and seven (7) copies of the statement shall be filed with the originals.

(d) The Clerk of the Supreme Forum, on receipt of such notice and statement, shall serve a copy of both documents on the adverse party in the manner provided for service in Sec. 33.11;

(e) Upon receiving such notice, and statement and after service of a copy of the same on the adverse

party, the Clerk of the Supreme Forum shall forward the original and copies making up the file to the Chief Justice.

The Chief Justice, on receipt of the record and file, shall, by appropriate order, determine whether the matter shall be heard on briefs or on oral argument. If on briefs, he shall fix the time within which the parties may file their briefs; if on oral argument, he shall fix the time and place, when and where such oral argument may be heard. The Chief Justice or the Supreme Forum may order and direct the filing of briefs and also oral argument.

Either party may conduct the appeal and the proceedings thereon in person or by counsel.

The Chief Justice, by appropriate order, may direct for the use of the Supreme Forum, the production of a transcript of the minutes, testimony or records and any other form of evidence used in or relating to the proceedings out of which the appeal arises, or so much thereof as the Chief Justice may determine is necessary to afford a clear understanding of the merits of the matter on appeal. If the Supreme Forum deems it necessary for a full determination of the appeal, it may require additional testimony to be taken, or additional records or evidence to be produced; and to that end the Supreme Forum may take additional testimony itself.

The Chief Justice may, by appropriate order, direct either party to the proceeding on appeal to pay as costs, in advance, a sum sufficient to cover the reasonable cost and expense in procuring the testimony, records or other evidence to be used on appeal; the Supreme Forum may, as part of its judgment, assess costs as it deems fit and proper.

#### Chapter 34—General Judicial Provisions

**Sec. 34.1—Qualifications of all Supreme Lodge Officers.**—All Supreme Lodge Officers and Committeemen shall at the time of their appointment and throughout the term of their service, be in good standing in a lodge of the Order, which lodge is itself in good standing. All officers and committeemen of lodges, elective and appointive, shall be in good standing in their respective lodges at the time of their nomination, election or appointment, and continually during the time they hold such office. Failure to remain in good standing on the part of any Officer or Committeeman of the Supreme Lodge or any lodge shall vacate such office.

**Sec. 34.2—Qualifications of Lodge Representatives.**—All representatives of member lodges shall be in good standing at the time they are certified by the Credentials Committee, and the lodge of which they are a member shall likewise be in good standing before such representative shall be allowed to participate in the business of the Supreme Lodge in any manner, other than as a visitor.

**Sec. 34.3—Limitation of Lodge Authority**—The lodges of the Order, the legions, the chapters, or any other unit of the Order, or any officer or member thereof, shall not be the agent or representative of the Supreme Lodge, and shall not impose any liability upon the Supreme Lodge in the transaction of any business, and particularly not in the matter of the election and enrollment in such units of applicants for membership therein, nor in the conduct of any activity of such units or in any dealing of any kind whatsoever by such units with their members or other persons.

#### **TITLE IV STATE AND PROVINCIAL ASSOCIATIONS**

##### **Chapter 41—Organization**

**Sec. 41.1—Creation**—The lodges of any state, territory, or province may, by consent of the Supreme Council, organize and maintain a state, territorial, or provincial association composed of lodges of that state, territory, or province; or the lodges of two or more states, territories, or provinces may organize and maintain an association composed of lodges of those states, territories, or provinces. Where conditions may deem it advisable, any state, territory, or province may be divided into districts, and the lodges of any such district may organize and maintain an association composed of lodges of such district.

**Sec. 41.2—Powers and Limitations**—Each association shall have power to regulate its own internal affairs in such manner as it shall see fit not inconsistent with the Constitution and General Laws. No association shall have or exercise any executive, legislative or judicial functions except concerning its own internal affairs, nor have jurisdiction over the lodges of which it is composed, nor of their members.

**Sec. 41.3—By-Laws**—On and after September 1, 1939, the Constitution and By-Laws of any such association heretofore or hereafter organized, and all amendments thereto and changes therein, and all amendments to and changes in the Constitution and By-Laws of any such association now organized and maintained, shall not become effective unless and until the same shall have been approved by the Supreme Council or by such authority as shall be designated for such purpose by the Supreme Council.

##### **Chapter 42—Limitations**

**Sec. 42.1—Supervision by Supreme Lodge**—All state, territorial, and provincial associations now or hereafter organized and maintained shall at all times be amenable and subject to the supervision and control of the Supreme Lodge and its qualified Officers.

**Sec. 42.2—Governing Body**—The governing body of any such association whenever used in these General Laws shall be construed to be the association itself.

**Sec. 42.3—No Endorsements**—No such association



shall either directly or indirectly endorse the candidacy of any person for any office in the Supreme Lodge nor take any action whatever in any manner concerning the same; nor shall any such association take any action whatever on any political, legislative or public policy matter, whether general or local, unless such action be in accord with previous action of the Supreme Lodge, or unless the action taken be approved by the Supreme Council before such action is promulgated or made public.

**Sec. 42.4—Furnish Information—**Each such association shall furnish to the Supreme Secretary a correct list of its officers and the lodges composing it, together with the correct post office address of such officers and each member of its governing body, and shall at all times promptly furnish to the Supreme Secretary or to any officer or authority designated by the Supreme Council, any other information that may be requested.

The Supreme Council, or any Officer or Committee of the Supreme Lodge, may call upon the governing body or any officer of any such association for advice, recommendation or information concerning any matter arising within the geographical division for which such association is organized, and it shall be the duty of such governing body or officer to furnish such advice, recommendation or information so called for, but such advice, recommendation or information shall not be binding upon the Supreme Council or Officer or Committee of the Supreme Lodge calling for the same.

**Sec. 42.5—Suspension—**The Supreme Council may suspend any such association whenever, after investigation, it is satisfied that such association has been guilty of violating any of the provisions of the Constitution or General Laws of the Order. In case of such suspension the Supreme Council shall report the same, together with the reasons therefor, to the Supreme Lodge at its next session, and the Supreme Lodge shall take such action as it may see fit. If the Supreme Lodge shall so determine by a majority vote of the members voting upon such proposition, such association may be ordered to dissolve and wind up its affairs and thereafter such association shall cease to be a legal association and shall transact only such business as may be absolutely necessary to effect its dissolution.

**Sec. 42.6—Dissolution—**No lodge shall become or be a member of any such association that shall have been ordered to dissolve as provided in the next preceding section, nor shall any member of the Order be or act as an officer or committeeman or otherwise of any such dissolved association, except for the sole purpose of winding up its affairs. Violation of this section shall be punishable by suspension or revocation of the charter of any such lodge, or by fine, removal from office, suspension or expulsion from his lodge of any such member, in manner as provided by the General Laws.

# **LAWS FOR MEMBER LODGES**

## **TITLE V**

### **LODGE ORGANIZATION**

#### **Chapter 51—General Provisions**

**Sec. 51.1—Lodges Classified**—For the purpose of administrative handling, Lodges may be classified in three (3) classes: Class "A"—Lodges of one thousand (1,000) members and over. Class "B"—Lodges of two hundred (200) members and less than one thousand (1,000). Class "C"—Lodges having less than two hundred (200) members. The Supreme Council and the Supreme Secretary are authorized to provide rules and regulations to carry this Section into effect.

**Sec. 51.2—Seal of the Lodge**—As soon as practicable after the institution of a lodge, the Supreme Secretary shall provide it with a metal seal. Upon the surface thereof shall be a circle, in the center of which shall be a facsimile of a moose head, and about the periphery shall be the name, number, location and date of institution of the lodge.

#### **Chapter 52—New Lodges**

**Sec. 52.1—Petition for Charter and Name**—Petition for lodge charter must be made in writing by not less than fifty persons qualified as required for membership in lodges. At least thirty of the petitioners must be present when the lodge is instituted.

A duly authorized and chartered Lodge shall be known as  
Lodge No. , Loyal Order of Moose.

**Sec. 52.2—Dispensation for Charter**—A lodge shall not, under any conditions or circumstances, be instituted until a dispensation in proper form is issued by the Supreme Secretary and placed in the possession of some duly authorized representative of the applicants for charter.

**Sec. 52.3 — Issuance of Charter**—The Supreme Secretary shall forward a charter to the Secretary of each newly instituted lodge within 30 days after receiving proper application containing a certified list of the charter members. The charter shall be of the form adopted by the Supreme Lodge and shall bear the signatures of the Supreme Governor and the Supreme Secretary, together with the imprint of the seal of the Supreme Lodge.

**Sec. 52.4—New Lodge Officers**—At the institution of a new lodge, the authorized representative of the Supreme Lodge shall appoint the officers for the first term, including the Junior Past Governor.

**Sec. 52.5—Issuance of Supplies**—The Supreme Secretary shall, after receiving the required petition for charter, forward to the authorized representative the official paraphernalia and supplies required for the institution of a lodge, as prescribed by the Supreme Council.

Additional supplies for the use of lodges shall be secured only from the Supreme Secretary upon terms stated when requested. All supplies required to be secured through the Supreme Secretary are for the exclusive use of the lodge, and for that purpose are held in trust. Upon the dissolution of a lodge, all supplies so secured must be returned to the Supreme Secretary.

If for any reason a lodge be not duly instituted within a period of sixty days after the date of issue of the dispensation therefor, all paraphernalia and supplies furnished by the Supreme Lodge shall be returned in good condition to the Supreme Secretary.

**Sec. 52.6 — Institution Report** — Within five days after the institution of a lodge the Supreme Lodge representative instituting the same shall forward to the Supreme Secretary a proper institution report. Such report shall contain the names and addresses of the officers appointed.

**Sec. 52.7—Establishment of By-Laws**—Each lodge shall adopt such by-laws as its needs require and as are not inconsistent or in conflict with the laws enacted by the Supreme Lodge or regulations established by the Supreme Council. Said by-laws may provide for a welfare system, sick, funeral or other forms of benefits as authorized by the General Laws, or the Supreme Council. All such by-laws are subject to the approval of the General Governor and shall not become effective until they have been submitted in duplicate to the General Governor and approved by him in writing. One copy of the proposed and approved by-laws of each lodge shall be kept on file in the office of the General Governor and the other duly approved copy shall be returned to the lodge.

### **Chapter 53—Officers—Nomination—Election—Representation**

**Sec. 53.1—Elective Officers**—The elective officers of a lodge shall consist of a Governor, Junior Governor, Prelate, Secretary, Treasurer, and three Trustees. With the exception of the Secretary, they shall be nominated the last meeting in March and shall be elected the first meeting in April of each year, all of whom shall serve for one year, except the Trustees, who shall be elected for three years, provided that the terms shall be so arranged that one will expire each year; provided, further, the report of the Nominating Committee shall be made two weeks before election. Each officer shall serve until his successor is elected and qualified, provided that no nomination shall be made on the night of the election for any office except for such office for which there is no nominee, and then only upon a dispensation from the General Governor. The Secretary shall be nominated by the Board of Officers and elected by the lodge, subject to confirmation by the Supreme Council, for a term of satisfac-

tory service, whereupon, he becomes a member of the Board of Officers. The same procedure will apply in filling any vacancy in the office of Secretary created by death, resignation, or otherwise. The retiring Governor shall serve as the Junior Past Governor, provided that he shall have completed the term for which he was elected as Governor. Past Governorship is a condition and not an office, and remains with the member so long as he continues his good standing in the Order.

**Sec. 53.2—Nominating Committee**—The by-laws of the lodge shall provide for a Nominating Committee to consist of the elective officers of the lodge, five Past Governors (if the lodge has so many) in their order of juniority, and five members of the lodge to be appointed by the Governor. A larger Nominating Committee may be provided for when in the opinion of the lodge such is necessary for the good of the lodge, upon a special dispensation therefor secured from the General Governor.

**Sec. 53.3—Meetings of Nominating Committee**—The Nominating Committee shall be organized not later than the last meeting in February and shall give notice of the time and place of its meeting either by written communication addressed to the Secretary of the lodge or by a verbal statement in open lodge. Any aspirant for an elective office in the lodge may submit his name to the Nominating Committee at least three weeks prior to the date of the regular election, or two weeks prior to the date of any special election. The Nominating Committee shall consider all names submitted and shall select from the names submitted, or others, at least one candidate for each office to be filled not later than two weeks before the date of the election, in the form of a report in writing to the lodge, giving the names of the members selected by it. And the names so chosen by the Nominating Committee shall be placed upon the official lodge ballot.

**Sec. 53.4—Nominating by Petition**—Any member of the lodge not nominated by the Nominating Committee who desires to be a nominee for any office may have his name placed upon the official ballot of the lodge by the petition and signatures of ten per cent of the first five hundred members and five per cent of the membership of the lodge in excess of five hundred, all of whom must be in good standing and not in arrears for dues at the time of signing such petition. Such petition shall be in no case signed by anyone prior to the report of the Nominating Committee, and must be in the hands of the Secretary at least one week before the date of the election. Such nominating petition shall contain substantially the following words and no other, to wit: "We, the undersigned members in good standing in ..... Lodge No. ...., Loyal Order of Moose, hereby nominate .....,

a member in good standing of said lodge, for the office of \_\_\_\_\_

**Sec. 53.5—Eligibility of Officers**—A member shall not be eligible to the office of Governor, Junior Governor, or Prelate of a lodge until after he has been a member thereof for a period of six months preceding the date of his election, except upon a dispensation from the General Governor. This requirement shall not apply to a newly-instituted lodge. No member shall be eligible for election to more than one office in the lodge at the same time. A member under suspension because of charges preferred against him, shall be eligible as a candidate for election to office, but if found guilty of the charge, the office shall be declared vacant and an election held to fill the same.

**Sec. 53.6—Voting**—Only members who have their dues paid up to or beyond the date of the election are eligible to vote for the election of officers. A lodge may use the Australian ballot and a period of not more than 12 hours shall be used for said election. The candidate for each office receiving a plurality of the votes cast, shall be declared elected.

**Sec. 53.7—Campaigning for Office Prohibited**—The printing, circulating or distribution of resolutions, letters, tickets or other written or printed matters, by a member or members, suggesting, recommending, opposing or containing the names of proposed candidates for office, is hereby prohibited. For any violation of this section, the General Governor may suspend the offending member or members, and he may in his judgment, declare the election of such officer or officers void and order a new election.

**Sec. 53.8—Installation**—The Junior Past Governor (who served as such during the past year) shall be the installing officer of his lodge and shall install all duly elected officers at the last meeting in April of each year, to take office as of midnight, April 30, provided the certificate of good standing, based upon the January 31 immediately preceding report, has been received from the Supreme Lodge. If for any reason the Junior Past Governor cannot act, any Past Governor appointed by the Governor may conduct the installation ceremonies.

**Sec. 53.9—Duties of Officers**—All officers of lodges whose duty it is to take part in ritualistic work shall be required to memorize within a reasonable length of time such parts of the Ritual as are assigned to them.

**Compensation**—None of the lodge officers, except the Secretary, shall receive any compensation for his services.

**Surety**—The Governor, Secretary, Treasurer and Trustees of each lodge, and the Secretary, Treas-



urer and Steward and other employees of the House Committee of each lodge, shall each give a surety bond under the supervision of the Supreme Secretary in such sum as he may require. The premium for such bonds shall be paid by the lodge. Every officer and member of the lodge is morally bound to use all reasonable means to bring to justice by proper criminal prosecution any officer guilty of any offense involving moral turpitude in handling the property of the lodge.

**Sec. 53.10—Vacancy**—All vacancies in any of the elective offices except that of Secretary of a lodge shall be filled by election, but all nominations therefore shall be reported by the Nominating Committee at a regular meeting at least two weeks previous to the election, provided, however, that the General Governor for good cause shown may issue special dispensation waiving such election and authorize that the vacancy be filled by appointment.

**Sec. 53.11—Representation to Supreme Lodge**—The Governor and Secretary of a member lodge, by virtue of their offices, shall be its representatives to the Supreme Lodge during their terms of office. Alternate representatives shall be nominated by the Nominating Committee and elected at the time of the election of officers. The alternate representatives shall be any Past Governor or elective officer in good standing of such lodge.

Each lodge shall promptly certify its representatives and alternates to the Supreme Secretary, and thereupon the Supreme Secretary shall issue a certificate to said representatives and alternates.

Each representative from any district created under the laws of the Order shall be certified to the Supreme Secretary by all lodges in said district, and the Supreme Secretary shall issue a certificate in the same manner as provided for member lodges.

\* Such certificate must be presented to the Committee on Credentials which shall pass upon the eligibility of each representative to a seat in the Supreme Lodge meeting.

The representative of a lodge shall not be entitled to a seat in any meeting while his lodge is in arrears for any lawful charges of the Supreme Lodge. All disputes as to any charges against the lodge shall be finally determined forthwith by the Supreme Secretary at the time the representative of the lodge presents his credentials to the committee.

It shall be the duty of the representatives to the Supreme Lodge Convention to attend the sessions thereof and submit a written report to their lodge, at the next regular meeting following the Supreme Lodge Convention.

## **Chapter 54—Governor of the Lodge**

**Sec. 54.1—To Preside**—It shall be the duty of the Governor to preside at all meetings of the lodge, to preserve order, and to apply and enforce all of the laws of the Order, and impose reasonable fines upon members for offenses or misconduct committed while the lodge is in session or committed in the lodge room or club rooms of the lodge in his presence.

**Sec. 54.2—Parliamentary Questions**—He shall, subject to appeal, decide all parliamentary questions which may arise in the lodge.

Roberts' Rules of Order shall govern all proceedings of lodges except as otherwise provided herein.

**Sec. 54.3 — Appoint Officers** — The Governor shall appoint a Sergeant-at-Arms, Inner Guard and Outer Guard, who shall serve at the pleasure of the Governor.

**Sec. 54.4—Appoint Committees**—He must, at the first regular meeting after being installed, appoint all members of such standing committees as the by-laws may prescribe; and such other committees as may be required from time to time. He shall be a member of all committees of the lodge, and may require reports from all committees and all officers of the lodge at his pleasure. The regular standing committees of each lodge shall include an Endowment Fund Committee, Membership Committee, Membership Conservation Committee, Civic Affairs Committee, Ritualistic Committee, Publicity Committee, and Sports Committee. Each committee shall consist of at least three (3) members in good standing in the lodge.

**Sec. 54.5—Appoint Auditing Committee**—He shall, at the first regular meeting after being installed, appoint an Auditing Committee of three members of the Lodge in good standing, to serve for one year. He shall demand and receive from all officers of the lodge all stocks, bonds, notes, and all accounts and records of the lodge that may enable the Auditing Committee to make a full and correct report. Neither the Secretary, Treasurer, nor any of the Trustees shall be a member of the Auditing Committee.

**Sec. 54.6—Chairman of House Committee and Benefit Board**—He shall be Chairman of the House Committee and of the Benefit Board, but he may designate a member to act for him.

**Sec. 54.7—Inspect Ballots and Books**—He shall, in conjunction with the Junior Governor, inspect all ballots cast on applicants and shall cast the deciding vote upon all questions before the lodge on which there may be an equal division of members, except in the election of officers and alternate representative.

He shall have the right to examine all books, records and documents of any officer of the lodge at any

time and shall examine said books, records, and documents from time to time as shall be determined by him to be necessary for the protection of the funds of the lodge.

**Sec. 54.8 — Secretary Funds Deposited and Sign Warrants—**He shall sign all warrants drawn by the Secretary, which have been voted by the lodge, together with such cards, certificates and notices as may require his signature. He shall, with the Secretary and Treasurer, be custodian of all securities.

He shall see that all funds of the lodge are deposited in bank weekly by the Secretary, in the name of the lodge, and that a certified deposit slip is given the Treasurer for each and every deposit so made.

**Sec. 54.9 — Custodian of Rituals —**The Governor shall at all times have charge and custody of the printed copies of the Rituals of the lodge and all written portions of the secret work of the Order, shall keep the same in a safe place when not in use, and be responsible therefor.

**Sec. 54.10—Declare Office Vacant—**When any officer of the lodge is absent for three consecutive regular meetings without being excused by the lodge, or if his dues shall not be paid on or before the 15th day of the first month of each quarter, the Governor may declare such office vacant and order an election to fill such vacancy. In the event that the Governor of the lodge shall have been absent for three consecutive meetings, without excuse from the lodge, the Junior Past Governor may declare his office vacant and order an election as provided by law. If the Junior Past Governor of the lodge is not in good standing, this duty shall be performed by the Trustees.

**Sec. 54.11—Drop Members From the Roll—**He shall, upon receipt of a proper certificate of the clerk of any court, wherein a member has been convicted of any crime punishable by imprisonment, or upon other satisfactory proof that such facts exist, declare such member expelled from the lodge and order his name stricken from the membership roll and may direct the Secretary to drop from the rolls any member who has neglected to pay his dues or any other lawful charge due the lodge from him within thirty (30) days after the same became due.

**Sec. 54.12—Duties to the Sick and Bereaved—**Immediately after being notified of a member's sickness or disability, he shall, in cooperation with the Junior Governor, cause one or more members of the Board of Officers to visit the disabled member at least once a week during his illness, unless other provision therefor is made by the lodge, and provided, the residence of such member is within the jurisdiction of the lodge.

He shall, at the proper time, make the necessary arrangements for the burial ceremony if requested by the family of a deceased member.

**Sec. 54.13—General Duties**—He shall perform all other duties required of him by the laws and Ritual of the Order. He shall properly compile his portion of the certified report to the Supreme Secretary on the forms prepared by the Supreme Secretary and give such other information as may be required.

### **Chapter 55—Secretary**

**Sec. 55.1—Keep Financial Accounts**—He shall correctly keep the lodge Accounts in such books as may be required by the Supreme Lodge, and shall receive all money except as otherwise provided herein. He shall deposit at least once each week, in the bank designated by the lodge as the depository of the lodge, funds to the credit of the lodge, all such moneys and other collections, and shall make a deposit slip for each of such deposits in duplicate, leaving one such deposit slip with the bank and giving the other to the Treasurer of the lodge, and secure a receipt therefor in part three of the Secretary's cash book in manner and form as though the moneys had been delivered to the Treasurer of the lodge instead of the deposit slips.

**Sec. 55.2—Keep Records of Memberships**—He shall keep in such books as the Supreme Lodge may require true and accurate accounts between the lodge and each member thereof. He shall preserve and file all health statements and applications for membership and all applications for sick benefits presented by the members as part of the permanent records of the lodge. He shall, at the first meeting in February, May, August and November, make a report in detail to the lodge of the financial condition of the lodge, as shown by the books for the preceding quarter, the standing of the membership, and those in arrears. He shall, at least ten days prior to the beginning of each quarter, notify each member of the lodge by mailing to his last known post office address a proper notice of the beginning of the new quarter, the amount of dues for the same, and the amount of arrearage, if any. He may, at the expiration of thirty days from the time when the quarterly dues are payable, read in open lodge the names of all members who are in arrears, and the amount due from each.

**Sec. 55.3—Keep Securities**—The Secretary, with the Governor and Treasurer, shall be the custodian and be responsible for the securities and valuable papers of the lodge and keep them in some safe place as they may provide.

**Sec. 55.4—Make Quarterly Report**—For the purpose of making a quarterly report to the Supreme Secretary, he shall close his books as of twelve o'clock noon, on the last business day of the months of January, April, July and October of each year, and shall immediately deposit all moneys on hand. He shall then assist the Auditing Committee in preparing a complete, certified quarterly report on printed forms furnished by the Su-

preme Secretary, between the first and tenth day of February, May, August and November of each year, covering all transactions for the period of three months immediately preceding the closing of the books. He shall accompany this report to the Supreme Secretary with certificates from all banks in which the moneys of the lodge are deposited, certifying the balance on hand in each bank at the close of business at the last day of the quarter for which the report was made. He shall also accompany the quarterly report with the amount of Supreme Lodge Dues (A.B.C.D.), Endowment Fund Collection, Enrollment Fees, and all other moneys due the Supreme Lodge at the time of closing his books for the purpose of the report; and also the full amount of all Supreme Lodge Dues, and all other moneys to become due the Supreme Lodge, paid by members who have paid in advance of the fiscal quarter.

**Sec. 55.5—Furnish Information to Supreme Lodge**—He shall, immediately upon receipt of request from the Supreme Secretary, furnish to the Supreme Secretary a complete list of the names and addresses of all the members of the lodge in good standing, and shall keep such list correct month by month.

When requested by the Membership Enrollment Department or its representatives, during any period that his lodge is operating under a dispensation, he shall furnish all information concerning the membership.

**Sec. 55.6—Approve all Papers**—He shall sign all cards, receipts, certificates, communications, reports, instruments, documents and papers, affix the seal of the lodge upon all such documents, and draw, sign and deliver all warrants to the parties entitled thereto.

**Sec. 55.7—General Duties**—He shall keep a full and accurate record of all the proceedings of the lodge.

He shall read all reports, bulletins, applications and other communications to the lodge and conduct such correspondence as is necessary or as may be directed by the lodge, and preserve copies thereof.

He shall deliver to his successor in office all books, papers and all other property of the lodge which may be in his possession.

He shall perform all other duties required of him by the laws and Ritual of the Order.

**Sec. 55.8—Compensation**—As compensation for his services he shall be paid a percentage only of the actual membership fees and dues collected, of not to exceed 10%; provided, however, that the Supreme Council may, upon proper showing in any case, fix a different scale of compensation. Such compensation may be paid monthly or quarterly, but not until the Auditing Committee has audited his accounts for the period covered. In determining the compensation of the Secretary, no account shall be taken of any other moneys received or collected by him except the actual



membership fees and dues collected. It shall be his duty to use diligence in the collection of dues from all members.

### Chapter 56—Treasurer

**Sec. 56.1—General Duties**—He shall receive from the Secretary deposit slips showing the deposits made by him in the designated bank in the name of the lodge of all moneys of the lodge and shall give a receipt therefor in part three of the Secretary's cash book. Should any of the moneys of the lodge come to his hands, nevertheless, in the forms of cash or usual commercial paper, he shall deliver same to the Secretary for deposit in bank as hereinbefore provided. He shall, with the Governor and Secretary, be custodian of all securities.

He shall perform all other duties required of him by the laws and Ritual of the Order.

**Sec. 56.2—Sign all Warrants**—He shall sign all warrants drawn by the Secretary on the treasury of the lodge, provided same have been ordered by the lodge, and signed by the Secretary and Governor thereof.

**Sec. 56.3—Successor**—He shall deliver to his successor all moneys, books, papers, and other property of the lodge which he may have in his possession.

### Chapter 57—Junior Governor and Prelate

**Sec. 57.1—Junior Governor-Assist the Governor and Preside**—He shall assist the Governor in preserving order and decorum in the lodge, and in conjunction with him inspect all ballots on applicants.

He shall have charge of the door during sessions of the lodge.

He shall preside over the deliberations of the lodge in the absence of the Governor.

He shall be a member of the Benefit Board and shall visit the sick, needy or distressed.

He shall be a member of the House Committee and perform all other duties required of him by the Laws and Ritual of the Order.

**Sec. 57.2—Prelate—General Duties**—He shall be a member of the Benefit Board and the House Committee, and in the absence of the Governor and Junior Governor, he shall preside over the deliberations of the lodge and shall perform all other duties required of him by the laws and Ritual of the Order.

### Chapter 58—Other Offices of the Lodge

**Sec. 58.1—Trustees**—The Trustees shall take an inventory of all furniture and fixtures and other physical property of the lodge at least once each year, and oftener if required by the Governor or the lodge, and they shall deliver same to the Governor. They shall examine, investigate and audit all bills, excepting those recommended by the Benefit Board and those which are recurrent overhead items, such as charges for rent,

telephone, Supreme Lodge Dues, etc., and shall report to the lodge their recommendations as to payment. A majority of the Trustees may act. They shall perform all other duties required of them by the laws of the Order or by the lodge.

**Sec. 58.2—Sergeant-at-Arms**—He shall introduce all visitors and conduct them to seats within the lodge. He shall have charge of all the properties and paraphernalia of the lodge, not otherwise provided for, and perform all other duties required of him by the Governor, and all other duties required of him by the laws and Ritual of the Order.

**Sec. 58.3—Inner Guard**—He shall have charge of the inner door of the lodge room under the supervision of the Junior Governor, and shall perform all other duties required of him by the laws and Ritual of the Order.

**Sec. 58.4—Outer Guard**—He shall have charge of the outer door and the ante-room, and shall perform all other duties required of him by the laws and Ritual of the Order.

**Sec. 58.5—Junior Past Governor**—The Junior Past Governor shall be the installing officer of his lodge. He shall be a member of the board of officers, the House Committee, and the Benefit Board. In the absence of the Governor, Junior Governor and Prelate, he shall preside over the deliberations of his lodge.

#### **Chapter 59—Committees and Units**

**Sec. 59.1—Auditing Committee**—It shall be the duty of the Auditing Committee to audit monthly or daily, if it is desired, all of the books and accounts of the Secretary, Treasurer and Trustees, House Committee (if club is operated); and all other officers or committees that may be handling lodge funds, and shall demand for inspection and examination all books, bills, accounts and other evidence of value or debt bearing upon the records or reports of any Officer or Committee. The Chairman of the committee shall see that the printed "Instructions to the Auditing Committee" issued by the Supreme Lodge are followed in every particular. The Committee shall supervise the keeping of records by officers and committees of the lodge involving finances.

**Quarterly Audit.**—It shall be their duty to make a complete audit of all lodge and club records and accounts immediately after the close of each quarter on January 31, April 30, July 31 and October 31 of each year, and with the assistance of the Governor and the Secretary, shall compile the quarterly certified report to be sent to the Supreme Secretary, between the first and tenth day of February, May, August and November of each year, covering all transactions of the lodge for the three months immediately preceding.

**Special Audit.**—Whenever, in the opinion of the

Governor of the lodge or the Auditing Committee thereof, it is deemed necessary or expedient, shall make an audit of the books of the Secretary or Treasurer, or Trustees; and such officers shall deliver to the Auditing Committee such papers or books, or other documents as it may demand. If any such officer refuses to comply with the demands of the Auditing Committee, the Governor shall suspend such officer, and appoint his successor to act until an investigation of his accounts and conduct is made. The Auditing Committee shall at all times see that the books and records of the Secretary, Treasurer and Trustees are properly kept and that the entries therein are properly made. It shall be its duty to attend the meetings of the lodge and observe the replies of the Secretary and Treasurer to the questions of the Governor as to the receipts and disbursements of the funds of the lodge, and observe whether or not the responses made by such officers agree with the records kept by them. It shall be the duty of the Auditing Committee, if any discrepancies whatsoever are found at any time in any of the books of the lodge or in any of the reports made by any of the officers of the lodge, to report the same to the Supreme Secretary for proper investigation consistent with the duties and authority of his office.

**Sec. 59.2—Membership Conservation Committee—**The Governor shall appoint from among the members of the lodge a committee of not less than three as a Committee on Membership Conservation. The Secretary of each lodge, within fifteen days after the commencement of any quarter, shall furnish to said committee a complete list of all members in arrears, and it shall be the duty of said committee to cooperate with the Secretary in contacting such members to ascertain the cause and to collect all amounts due to renew their good standing.

**Sec. 59.3—Benefit Board—Organization—**The Governor, Junior Governor, Prelate, Secretary, Treasurer, three Trustees, and the Junior Past Governor shall constitute the Benefit Board of the lodge. Within one week after the installation of officers, the Benefit Board shall meet for the purpose of organization. The Governor shall be Chairman of the Board, and the Secretary of the lodge shall serve as Secretary thereof.

**Sec. 59.4—Powers and Duties—**The Benefit Board shall receive and carefully consider all reports on all sick or disabled members, and it shall determine who are and who are not entitled to benefits and submit its reports to the lodge. The report shall state the amount to which each is entitled, and a recommendation that warrants be drawn for the payment of same, subject to the approval of the lodge. If no objections are filed, the Governor shall direct that warrants be drawn for payment of the benefits recommended. No

claim for benefits shall be paid by the lodge without having been submitted to the Benefit Board.

**Sec. 59.5—Meetings of the Board**—The Benefit Board shall hold regular meetings prior to the regular meetings of the lodge, at which time it shall compile its report to be made to the lodge, as to the application for benefits, to whom payable, the amount due, and what members may be entitled thereto.

**Sec. 59.6—Proceedings upon Objections to Payment**—When the recommendations of the Benefit Board are reported to the lodge, any member of the lodge may object to the payment of benefits to anyone included in such report. The Governor shall immediately and without debate refer back to the Benefit Board any such claim for benefits objected to and said Board shall demand of the member complaining his objections in writing, and he shall give in detail his reason for such objections, which statement shall be fully considered by the Benefit Board, which shall investigate the case and report to the lodge at its next meeting. If the Board shall find that the member against whom objections have been filed is not entitled to benefits, its decision shall be final unless an appeal is taken to the lodge. An appeal may be taken from the action of the lodge thereon as provided by law.

When the Benefit Board shall report to the lodge that an applicant for benefits is not entitled thereto, its decision shall be final unless an appeal is taken to the lodge. An appeal may be taken from the action of the lodge thereon, as provided by law.

**Sec. 59.7—Records of Board**—The books and forms used by the Benefit Board shall be only such as are furnished and approved by the Supreme Lodge.

**Sec. 59.8—Appointment of Sick Steward**—The Board of Officers may appoint a Sick Steward whose duty it shall be to visit the sick and disabled members who have been reported to the lodge. Such appointee shall make a full report to the board at its regular meeting, and answer such questions as may be propounded by the Board, and shall perform such other duties as may be required by the board. Such appointee may receive such compensation as may be recommended and approved by the lodge.

## TITLE VI

### LODGE FINANCES, FEES, DUES AND FUNDS

#### Chapter 61—Lodge Fees

**Sec. 61.1—Enrollment Fee**—Each application for membership in a lodge shall be accompanied by such enrollment fee as the lodge shall determine, which shall be less than \$20.00 for dues paying membership. It is unlawful for any lodge or any officer thereof to issue receipts for dues to any member except for cash received in the amount therein stated, and such receipt or any part thereof shall not be issued as

compensation or commission for securing a new member.

**Sec. 61.2—Fee Forfeited.**—Each enrollment fee paid by an applicant for membership in a Lodge shall be forfeited by such applicant if he fails to appear for enrollment into the Lodge within ninety days after written notice to him of the time and place designated.

**Sec. 61.3—Special Fee Dispensation.**—Upon application of any lodge to the General Governor, he may grant a dispensation permitting an enrollment fee to be charged of less than \$20.00, but in no event less than \$10.00, except as otherwise provided in these laws. Such dispensation shall only be granted upon condition that the lodge enter into an agreement with the Membership Enrollment Department for recruiting the membership thereof. The enrollment fee so charged while the lodge is under dispensation shall be disposed of as provided by the agreement with the Membership Enrollment Department. At such times the Department shall have access to all the books of the lodge.

**Sec. 61.4—Beneficiary Life Membership.**—Any beneficiary member may, by a majority vote of his lodge, be granted a life beneficiary membership in the lodge by paying to the Secretary thereof such a sum as the by-laws may provide, which in no case shall be less than three hundred dollars.

**Sec. 61.5—Non-Beneficiary Life Membership.**—Any member of any lodge may, by a majority vote thereof, be granted a life non-beneficiary membership therein by the payment of such sum as the lodge by-laws may provide, which shall in no case be less than two hundred dollars.

**Sec. 61.6—Life Membership Cards.**—The Supreme Secretary shall prepare life membership cards and shall deliver to the Secretary of each lodge, cards corresponding to the number of life members in the lodge in good standing, and the Secretary shall sign, seal and deliver one of these cards to each life member. Such life membership cards shall be official evidence of membership.

**Sec. 61.7—Restrictions of Life Membership.**—Life Members of all lodges are amenable to all the laws and regulations of the Order, except the payment of dues. Life memberships are not transferrable. The membership fee for Life Members shall be so distributed as to include therein commuted dues of every kind and nature whatsoever.

**Sec. 61.8—Life Membership Fees.**—The fees paid with applications for Life Membership shall be distributed as follows: In the case of non-beneficiary Life Membership, not less than \$150.00 of the fee shall go to the General Fund of the lodge, and in the case of beneficiary life membership, not less than \$150.00 of the fee shall go to the General Fund and not less than \$100.00 thereof shall go into the Beneficiary Fund of



the lodge as commuted dues. The balance of the life membership fee may be regarded as an enrollment fee. A sum of not less than \$50.00 out of such General Fund allotment shall be immediately remitted to the Supreme Lodge as commuted Supreme Lodge dues. No life membership shall be given by a lodge to a member as a gratuity except upon a resolution adopted by a two-thirds vote of the lodge and with the approval of the General Governor; and provided further, that whenever a gratuitous life membership has been so granted, the required life membership fee, according to classification, shall be voted from the General Fund of the lodge and be distributed as above provided.

**Sec. 61.9—Non-Beneficiary Member**—A non-beneficiary member shall have all the rights and privileges enjoyed by beneficiary members except that he shall not be paid any sick or disability benefits or funeral expenses nor have the right to vote upon any question pertaining to the payment of such benefits. Nothing, however, in this section shall be construed to confer the right on any such member to hold office in either the Supreme Lodge or any lodge thereof in any State where such right is prohibited by law.

#### Chapter 62—Dues

**Sec. 62.1—Dues at Installation**—Immediately before the institution of a lodge all applicants about to be enrolled shall pay to the Acting Secretary thereof dues at such a rate as shall be determined by the applicants within the limits prescribed by the laws of the Order.

**Sec. 62.2—Annual Dues**—Each beneficiary member of a lodge shall pay to the Secretary of the Lodge annually, semi-annually or quarterly in advance, dues including the A. B. C. Dollar as provided in Section 63.5, in any sum the lodge may require, provided that at no time shall the total be less than \$15.00 per year. Non-beneficiary members shall pay into the lodge annually, semi-annually or quarterly, in advance, dues including the A. B. C. Dollar as provided in Section 63.5, of not less than \$10.00 per year.

**Sec. 62.3—A. B. C. Dollar Account**—Each lodge shall maintain a separate account to be known as the A. B. C. Dollar Account, the withdrawals to be subject to the signatures of the Supreme Secretary and the Secretary of the Lodge. The Secretary of the Lodge shall deposit to this account all A. B. C. Dollars collected, Endowment Fund collections and fees due the Membership Enrollment Department.

**Sec. 62.4—When Credited**—Quarterly terms for which dues shall run shall commence with the first day of January, April, July and October in each year.

Dues, whether paid by a member in person, or transmitted to the Secretary by mail or otherwise, shall be credited as of the date when the same are actually received by such officer, and his receipt to the member therefor shall bear the same date.

Applicants for membership who are enrolled into a lodge before the fifteenth day of the second month of the quarter shall pay dues for the full quarter. Those enrolled on or after the fifteenth day of the second month of the quarter shall not be required to pay dues for the balance of the quarter but shall pay dues for the next ensuing quarter. All memberships shall begin from the date of enrollment.

**Sec. 62.5—Non Payment of Dues—**Every member shall be in arrears at the end of fifteen days after the expiration of the quarter for which his dues were paid, and during such arrearage shall not be entitled to attend lodge meetings or enjoy the privileges of a club or home conducted by his lodge. A member in arrears is non-beneficial for all purposes. Upon the payment of his arrearages, he remains non-beneficial for the purpose of benefits for thirty days. A member's failure to receive notice of his dues or arrearages from the proper office of the lodge will not release him from the requirements of the law pertaining to the payment of his dues, nor will it be a ground for paying him sick benefits, paying funeral expenses or admitting his children to Mooseheart. A member in arrears may be carried on the rolls of the lodge for a period not to exceed 12 months.

**Sec. 62.6—Reinstatement of Member—**Any member who is dropped from the rolls for non-payment of dues may be reinstated within twelve months thereafter upon furnishing a duly executed medical or health statement such as is required of new members, and the payment of all arrearages for dues, fines or assessments that may have been owing by him at the time and having since accrued. In all cases of reinstatement, the applicant shall be balloted on, as in the case of a new member, provided, that no one who has passed his fiftieth birthday can be reinstated as a beneficial member. If application for reinstatement is not made within twelve months, as above provided, the dropped member shall be required to make application for admission as a new member. Provided, however, that the General Governor, for good cause shown, may issue special dispensation for the readmission of such dropped members at a lesser than the minimum enrollment fee.

**Sec. 62.7—Dues Waiver—50 Year Member—**The lodges of the Order may adopt, by amendment to their by-laws, a dues waiver plan wherein any member having fifty (50) or more years continuous membership in the Order, may upon his request be relieved of the obligation of paying further dues. Such amendment must state whether any existing sick and/or funeral benefit privileges shall continue. Such amendment shall not become effective until it has been submitted, in duplicate, to the General Governor and approved by him in writing. One copy of the proposed and approved amendment to the by-laws of each lodge shall be kept on file in the office of the General Governor, and the other

duly approved copy shall be returned to the lodge. After approval of such amendment, the Secretary of the lodge shall issue to the qualified member an annual dues receipt which shall indicate, in lieu of "Amount," the status: "Dues waived—50 year member." The A.B.C.D. for such member shall also be waived and such member shall continue to have membership eligibility to qualify for Mooseheart and Moosehaven service.

#### **Chapter 63—Lodge Funds**

**Sec. 63.1 — Investments** — Upon authorization received from the Supreme Council, a lodge may invest its surplus monies in depositories, securities, municipal, government, state or provincial bonds, in the same manner and under the same regulation and restriction that applies to investment of funds of the Supreme Lodge. The funds of a lodge shall not be invested in the securities of any other lodge.

**Sec. 63.2—Benefit Fund**—Each beneficiary lodge shall set apart a portion of the dues received, as a special fund to be used only for the payment of sick benefit and funeral expenses of at least \$1.25 per quarter of the dues of each beneficiary member of the lodge. Said fund shall be invested in the manner and form provided for the investment of other lodge funds, and, provided further, that it shall be unlawful for said fund or any part thereof to be used by any lodge or any of the officers thereof, for any other purpose ~~except the payment of benefits and funeral expenses,~~ and that it shall be unlawful for any lodge in any way or manner whatsoever to transfer said fund or any portion thereof to any other fund for any other use or purpose whatsoever without special dispensation from the General Governor.

**Sec. 63.3—General Fund**—All other moneys of the lodge of every kind and nature not belonging to the sick benefit and funeral expense fund shall constitute the General Fund of the lodge.

**Sec. 63.4 — Disbursements** — All disbursements of lodge funds must be by official warrant. Cash payments are strictly prohibited; nor shall any distribution be made of any lodge funds to any person or for any purpose except as provided by the General Laws or as authorized by the General Governor.

**Sec. 63.5—Financial Reports to Supreme Lodge**—Each lodge shall pay to the Supreme Lodge as Supreme Lodge dues such amount as the Supreme Council may from time to time determine or as the laws of the Order may provide, based upon the number of dues-paying members carried on the roll of a lodge as of twelve o'clock noon on the last day of January, April, July and October of each year. There shall be included in such Supreme Lodge Dues at least \$1.25 per quarter per member as above provided, to be known as "A Big Charity Dollar" (A-B-C-D). At

least one-half of said amount shall be allocated for the support of Mooseheart, the remaining amount thereof shall be allocated by the Supreme Council to other charitable enterprises, magazine subscription, and other necessary operating expenses of the Order. Any contribution by a member of a lodge for the charitable purposes of the Order in addition to the minimum here designated, when received by a lodge, shall be funds of the Supreme Lodge and be immediately transmitted to the Supreme Lodge together with the name and address of the donor.

**Sec. 63.6—Supreme Lodge Payments**—Should the required reports or Supreme Lodge Dues not be received by the Supreme Secretary on or before the fifth day of March, June, September or December, respectively, of each year, the Supreme Secretary shall in writing notify the Governor and Secretary of said lodge, and may notify all the members thereof, that the lodge is not in good standing and not entitled to the password. The Supreme Lodge or the Supreme Council at the next session after notice from the Supreme Secretary, may suspend or revoke the charter of the lodge unless all the reports and the Supreme Lodge Dues have been received by the Supreme Secretary. The Supreme Secretary may collect a fine of 1 per cent for each day the reports and the remittances are delayed more than four days after the first day of March, June, September or December, respectively. If, in the opinion of the Supreme Secretary, the delay of the report and the consequent fine be caused by the negligence of the Secretary, he shall notify the Governor of the lodge of that fact and the lodge shall cause the amount of the fine to be deducted from the compensation of the Secretary of said lodge. The Supreme Council may in its discretion remit any fine imposed or expense of audit of a lodge for failure to make reports or pay Supreme Lodge Dues as required; provided, however, that the Supreme Secretary may remit any such fine which does not exceed the sum of \$25.00.

**Sec. 63.7—Expenses to Convention**—Each lodge may pay out of its General Fund the expenses of its Representatives to the Supreme Lodge Convention. Such expenses shall not exceed the sum of \$20.00 a day for each day in actual attendance, including time necessarily used in traveling, in addition to mileage or actual transportation expense.

**Sec. 63.8—Restrictions or Solicitations**—Soliciting of donations or contributions of any kind or nature by any lodge or any member of a lodge for the benefit of any lodge or any member of a lodge or for any purpose in the name of any lodge or for any purpose in the name of any member of a lodge, from any lodge or member of a lodge, or from anyone else whomsoever, is strictly forbidden except by a Convention Committee of the lodge in the city entertaining the Conven-

tion, and unless upon good cause shown a dispensation is had from the Supreme Council.

**Sec. 63.9—Special Dispensation Required—**A lodge shall not conduct an enterprise of any kind for financial gain, without first submitting the proposition to the General Governor and securing a dispensation therefor. If granted, all the conditions thereof must be complied with. A lodge shall not under any circumstances conduct a lottery or raffle of any kind or description or send any notice or information regarding such to any lodge or person.

#### **Chapter 64—Lodge Benefits**

**Sec. 64.1—Sick Benefits—Who entitled—**Any beneficiary member, who has been a member of the lodge for at least six months and in good standing for a period of thirty (30) days last past, and who, through sickness or other disability is unable to follow his usual or some other vocation, may, upon presentation of proper application, after the first week of said sickness or disability, and during the continuance thereof, receive a sum of not more than seven dollars per week for not more than thirteen weeks, provided that such sickness or disability has not originated from the intemperance, illegal, immoral or vicious conduct of such member. Provided, however, that when a lodge desires to do so, a larger amount than \$1.25 per quarter per beneficiary member may be put into the Beneficiary Fund, and a larger sick benefit than \$7.00 per week may be paid, but not exceeding \$10.00 per week; provided that total benefits paid to any one member in any one year shall not exceed one hundred dollars (\$100.00). Before doing so, the lodge must submit to the General Governor proposed by-laws providing for the payment of such sick benefits and must secure from him a permit so to do.

**Sec. 64.2—Special Provisions of Sick Benefits—**The first week for which benefits may be paid shall begin seven days after notice of said sickness or disability has been given to the Secretary or Governor of his lodge, or of the lodge in whose jurisdiction he may be. No member shall be entitled to benefits for more than thirteen weeks during any period of twelve months. If, when an application is made for benefits it shall appear from the records that the maximum benefits have been paid to the applicant within a period of twelve consecutive months, a member shall not be entitled to receive further benefits until twelve months from the time when the last of such benefits were due and payable, nor shall any member be paid benefits for a fractional part of a week.

Any member on the sick list of a lodge and within the jurisdiction of his lodge or of some other lodge of the Order and who is not confined to his residence shall continue to report in person at least once each



week to the Governor or the Secretary of his lodge or of the lodge in which jurisdiction he is.

**Sec. 64.3—Reports for Benefits**—A beneficiary member who has become non-beneficial through arrearage of dues, becomes beneficial for benefits after the expiration of thirty days from the date of the payment of his arrearages; provided, however, that if any beneficiary member becomes sick or disabled before the expiration of the thirty day period herein referred to, he shall not be entitled to receive benefits for such sickness or disability; and provided further, that any beneficiary member who becomes sick or disabled while in arrears for dues to his lodge, cannot, by the payment of such arrearages, become entitled to receive benefits during such sickness or disability.

**Sec. 64.4—Restrictions on Benefits**—No member shall be entitled to receive benefits for any concealed or undisclosed disease or infirmity which existed at the time of his admission into the lodge.

No member who has received benefits for any sickness or disease shall be entitled to any benefits for the recurrence of such sickness or disease or for any chronic disease or continuous ailment for which he has previously been paid benefits for the maximum number of weeks.

Any member who becomes sick or disabled while in good standing and entitled to sick benefits, shall be continued in good standing during the period he is drawing benefits, by deducting the quarterly dues from the benefits due to such sick or disabled member, if such sickness or disability continues beyond the time for the payment of such dues.

When a new member becomes sick or disabled before the six months' probation period expires, he shall not be entitled to receive benefits for such sickness or disability even though such sickness or disability continues beyond such period; provided, however, that a beneficiary member admitted by transfer card shall become beneficiary at the expiration of six months from the date of his admission to the lodge, notwithstanding the foregoing.

**Sec. 64.5—Funeral Benefits**—Upon the death of a beneficiary member who has been such for a period of at least six months and who, thirty days or more prior thereto, has paid all dues or other indebtedness to the lodge, funeral expenses may be paid if provided by the by-laws of the lodge, which in no event shall be more than \$100.00. In the event the funeral expenses of the deceased member have been paid from some other source, or if a balance remains after paying same, the whole amount of the funeral expense money provided or the unexpended balance shall be paid to the widow or minor children of the deceased, if any. If the deceased leaves no widow nor any minor child or children surviving him, the amount may be paid to some other

designated dependent, if any. If there be no widow or minor child or other designated dependent, the unexpended funeral expense money, if any, shall remain in the treasury of the lodge.

**Sec. 64.6—Restrictions on Issuing Funeral Benefits**

—A member shall not be entitled to funeral expenses if his death results from intemperate, immoral, vicious or illegal actions or conduct, or from any concealed or undisclosed disease or infirmity which existed at or before the date of his admission into the lodge. The payment of his dues under such circumstances does not relieve the member from the requirements of the laws of the Order pertaining to benefits. In the event of death by suicide, whether sane or insane, funeral expenses in the sum of ten dollars shall be paid if the case is otherwise one requiring the payment of funeral expenses under the by-laws of the lodge. A member who has become sick or disabled while in arrears for dues to his lodge cannot by the payment of such arrearages become entitled to funeral expenses if death shall occur as a result of such sickness or disability. He must have been in good beneficial standing continuously for thirty days to be entitled to funeral expenses in any event; provided he has been a member of the lodge for at least six months.

**Sec. 64.7—Jurisdiction over Sick and Funeral Benefits**

—Whenever a beneficiary member in good standing in a lodge and entitled to benefits becomes sick or dies outside of the jurisdiction thereof and within the jurisdiction of another lodge, such lodge in the jurisdiction of which such member becomes sick or dies shall in every reasonable way represent the lodge of which such person is or was a member in the administration of these laws, and shall deliver to such sick member any sick benefit moneys remitted to it by the lodge of which such sick person is a member, and shall disburse funeral expense money, if any, which the lodge of which the deceased was a member, may remit for that purpose to the lodge in the jurisdiction of which such member died. Such lodge, in the jurisdiction of which such member becomes sick or dies, shall report promptly to the lodge of which such person is or was a member, any action taken, with proper receipts for all money disbursed, and shall return to the remitting lodge any funds remaining in the possession of the disbursing lodge.

## TITLE VII

### LODGE MEMBERSHIP AND ITS ACTIVITIES

#### Chapter 71—Lodge Membership

**Sec. 71.1—Qualifications of Member**—The membership of lodges shall be composed of male persons of the Caucasian or White race above the age of twenty-one years, and not married to someone of any other than the Caucasian or White race, who are of good moral character, physically and mentally normal, who shall profess a belief in a Supreme Being, and shall be divided into two classes: (a) Beneficiary; (b) Non-Beneficiary. The Beneficiary class shall consist of those members who, in addition to other qualifications required by the laws of the Order, shall, at the time of becoming a member, be less than fifty years of age and shall be entitled to all the benefits provided by the by-laws of the lodge in which they hold membership. The Non-Beneficiary class shall consist of those members who shall not be entitled to all the benefits provided for by the by-laws of the lodge in which they hold membership. Any member of a lodge may change from one class to the other upon complying with the requirements of admission to such class, provided that no member above the age of fifty years may change from the Non-Beneficiary to the Beneficiary class.

**Sec. 71.2—Dual Membership**—No person shall hold membership in more than one lodge or other unit of the same degree, except upon dispensation from the General Governor.

**Sec. 71.3—Application for Membership**—Each person desiring to become a member of a lodge must properly fill out and sign an application therefor on a form provided by the Supreme Lodge, containing a health statement, and the true name and history of the applicant as well as his family. Said application together with the answers thereto, shall be a part of the agreement of membership between the member and the lodge, and the answers made to the questions contained in the application shall be warranties, and if any one is false, incomplete, or incorrect, it shall cause forfeiture of all rights and privileges as a member of the Loyal Order of Moose. If any applicant be elected or enrolled into any lodge in violation of this section, he shall be expelled from the lodge immediately upon discovery.

**Sec. 71.4—Enrollment of a Member**—A person cannot legally become a member of any lodge unless he shall be enrolled into said lodge in the manner and form prescribed by the enrollment Ritual of the Order,

except upon a dispensation granted by the General Governor. Only approved applicants for enrollment and members in good standing of a lodge of the fraternity are permitted to attend the enrollment ritual ceremony.

**Sec. 71.5—Investigating Committee**—Every applicant for membership shall be referred to a committee of three (3) members to be appointed by the Governor of the lodge. Said committee shall conduct a thorough investigation of the applicant and make report to the Board of Officers as to their finding, either favorable or unfavorable. When the investigating committee reports unfavorably on an applicant for membership, the Governor shall declare him rejected without the formality of ballot and he cannot again be proposed for membership until after the expiration of a period of six months from the date of such rejection.

If the report of the investigating committee is favorable, the applicant shall be balloted on in the manner provided by the ritual.

**Sec. 71.6—Rejection by Ballot**—When a candidate for membership is balloted on and receives three or more black balls, he shall be declared rejected and he cannot be proposed for membership again until after the expiration of a period of six months from the date of such rejection, except by special dispensation by the General Governor. Provided, that when a candidate has been balloted on and appears to have been rejected, the Governor may immediately upon his own motion, or the request of any member, declare a reballot at the same meeting; provided further, that when more than one candidate is being balloted on and three or more black balls appear, the Governor shall require another ballot immediately and the candidates shall be then balloted on in small groups or individually.

**Sec. 71.7—Effect of Rejection**—An applicant who has been rejected for any cause, cannot be elected or enrolled into any lodge of this Order except the one in which he first made application, unless such lodge, upon proper request, gives its written consent thereto. Any applicant who becomes a member in violation of the above rule shall be forthwith, upon discovery, dropped from the roll. A former member of any lodge who has been dropped for non-payment of dues, cannot be elected or enrolled into any other lodge of the Order until after a period of six months.

**Sec. 71.8—Jurisdiction Limited**—A lodge shall not solicit, or elect to membership therein, any person residing within the jurisdiction of another lodge. The Supreme Council, upon request, will, when necessary, define and designate the jurisdiction of a lodge. When a lodge accepts an application or enrollment fee from any applicant in the jurisdiction of another lodge, it shall, upon complaint of the lodge within whose jurisdiction the applicant resided at the time of such acceptance, pay such enrollment fee to the lodge legally en-

titled to it.

**Sec. 71.9—Inactive Members**—A member shall be termed a Moose. A Moose in good standing shall have the same and equal privileges and immunities with every other member of his lodge. A member who has been expelled after due trial shall not thereafter be regarded as a Moose in any sense, unless restored to membership in a lodge in the manner provided by law. A member holding a readmission card, or who has been suspended after trial or who was a member of a lodge, the charter of which has been surrendered, or suspended, shall be deemed an inactive Moose. An inactive Moose shall not be permitted to visit any lodge, social club or home, or join as a Moose in any public procession or display of the Order; or to display or use any emblem of the Order, nor shall he receive relief as a Moose at the hands of a lodge.

**Sec. 71.10—Membership in Recruited Lodges**—During the life of any agreement between any lodge and the Membership Enrollment Department, it shall be the duty of such lodge and each member thereof to cooperate in the work provided for in said agreement. In the event that during the life of such agreement, any member or members of the lodge shall do or perform any act or anything calculated in the judgment of the Membership Enrollment Department or its representative to make impractical the proper fulfillment of the agreement with the Membership Enrollment Department, such member or members may be suspended from membership by the General Governor pending investigation of the effect of his or their action. During the time when any such agreement is in force between the Membership Enrollment Department and any lodge for the recruiting of said lodge, the authorized representatives shall have the same privilege of the floor as any member of said lodge, but shall not be privileged to vote on any question before the lodge.

## **Chapter 72—Lodge Meetings**

**Sec. 72.1—Regular Meetings**—The meetings of each lodge may be held either during the first and third, or second and fourth weeks of each month. The Officers of the lodge shall meet as a board at least twice a month and as many times as in their judgment the business of the lodge requires. When lodges meet only twice per month there shall be a meeting of the Board of Officers during the weeks in which no meeting of the lodge is held. Such officers' meeting shall be held, if possible, in the regular lodge room. If held in any other place, or at any other time than on the regular meeting night, the Governor shall so notify the lodge in an open meeting. At the officers' meeting such business may be transacted as has been referred to it or as is deemed by the officers for the best interest of the lodge. Each member may attend the officers' meeting, but the members shall have no voice in such meet-



ing unless called upon by the Governor. At such officers' meeting sick benefits and funeral expenses may be allowed, and applications for membership may be considered. The officers shall make a full and complete report of each officers' meeting to the membership at the regular meeting of the lodge, and nothing done therein shall be binding upon the lodge until it is concurred in by the lodge at its next regular meeting; provided, however, that nothing herein shall prevent the lodge from meeting in regular session each week if desired.

**Sec. 72.2—Special Meetings**—The Governor may at his discretion call a special meeting of the lodge at any time. He shall call a special meeting at any time he may be so requested, in writing, by eight members of the lodge in good standing. At such special meetings no business shall be transacted, except as may be stated in the notice of such call.

The Secretary shall prepare and mail all notices for special meetings to all members of the lodge in good standing at least five days previous to such special meeting. Such notice shall state the special business to be considered, and no other business shall be considered or transacted thereat.

**Sec. 72.3—Mooseheart Day**—October 27th is hereby designated as Mooseheart Day. This day shall be observed in all lodges, and all other organizations created and existing in the name of the Loyal Order of Moose, by proper exercises and by such ritualistic services as shall be provided therefor from time to time. Such exercises and such ritualistic services shall be commemorative of the establishment of Mooseheart, and the birthday of James J. Davis, its Founder, and shall exemplify the principles and ideals which give Mooseheart and its program of service its essential and exceptional attributes.

**Sec. 72.4—Memorial Day**—Annually, on or about the first Sunday in May of each year, lodges and other units of the Order may conduct services expressive of the ideals of the Order and in memory of departed members. Such services shall be designated as Memorial Day services.

**Sec. 72.5—Presiding Officer**—The lodge shall open at the appointed time, and in the absence of the Governor, the Junior Governor shall preside. In the absence of the Governor and Junior Governor, the Prelate shall preside, and in the absence of the Governor, Junior Governor and Prelate, the Junior Past Governor shall preside; and in the absence of all of the above named, a Past Governor in good standing shall preside. Such Past Governor shall be selected according to the order of his term of service.

**Sec. 72.6 — Offering of New Business** — All new business presented to the lodge, when so ordered by the Governor, shall be made in writing and shall be

referred to the officers of the lodge, who shall report the same at the next regular meeting of the lodge, with the officers' recommendation thereon.

**Sec. 72.7—Quorum**—Seven duly qualified members of the lodge shall constitute a quorum for the transaction of the ordinary business thereof. But no quorum shall be considered present unless a Past Governor in good standing, the Governor, Junior Governor or Prelate be present to preside.

**Sec. 72.8—Lodge May Impose Fine**—Each lodge shall have the right and power of imposing fines and enforcing payment thereof in the same manner as it may enforce the payment of dues.

**Sec. 72.9—Social Sessions**—Social sessions may be held as the lodge may determine. At the option of the lodge and under such rules as it may prescribe, persons not members of the Order may be admitted, but no social session may be held on Memorial Day or during a session of the lodge. The proceedings of social sessions shall be conducted with true gentlemanly decorum, and no vulgarity, profanity or indecent conduct shall be permitted. Any Moose offending against this provision shall be subject to discipline, suspension, or expulsion. Every Moose shall be responsible to the lodge for the conduct of guests admitted upon his invitation. If any lodge shall permit a violation of this law, its charter may be suspended or revoked, and the lodge shall be answerable for the conduct of all persons attending such social sessions.

**Sec. 72.10—Official Circulars to be Read**—All official circulars of the Director General, Supreme Governor, General Governor, Supreme Secretary, or the Supreme Council and the Membership Enrollment Department sent to the lodges shall be read at the next regular meeting after their receipt and it shall be the duty of the Governor to see that this requirement is rigidly enforced. Such official circulars shall be read from time to time when conditions of the lodge require information contained in such circulars.

**Sec. 72.11—Robert's Rules of Order**—Robert's Rules of Order shall govern all proceedings of lodges except as otherwise provided herein.

### Chapter 73—Membership Activities

**Sec. 73.1—Organization of Other Units**—There may be organized in each lodge, from among the members thereof in good standing, one or more drill teams, marching clubs, bands, choral groups or other similar units. The establishment and operation of all such units shall be under such rules and regulations as the Supreme Council may establish and promulgate.

**Sec. 73.2—Duties and Restrictions**—Units organized in any lodge may participate in such activities of the Order as may be authorized by the Governor in conformity with rules and regulations promulgated by the Supreme Council. Units shall not conduct any social

functions or any entertainments or incur any obligations or liabilities, financial or otherwise, except and only when authorized and approved at a regular meeting of the lodge.

**Sec. 73.3—Permit for Lodge Publication**—A lodge or any member of a lodge shall not either directly or indirectly, institute, establish, begin or maintain the publication of any magazine, newspaper or other periodical devoted or represented as being devoted to the interests of the Order or purporting to be a Moose publication in whole or in part without first securing the written permission therefor from the Supreme Council. The application for such permit must contain full informatoin as to the title, size, dates of issue, and the method of financing the printing, postage and other costs.

**Sec. 73.4—Restrictions on Permit for Lodge Publications**—The Supreme Council is hereby given full authority at any time to revoke any permit for any publication so granted by it. Any member or members violating any part of this law shall upon conviction thereof be punished by expulsion from their lodge.

**Sec. 73.5—Securing of Supplies**—All supplies and paraphernalia of every kind and description used by a lodge, including all blank books used in the lodge, shall be secured from the Supreme Lodge, through the Supreme Secretary.

No duplication, imitations or substitutions of supplies or paraphernalia furnished by the Supreme Lodge shall be purchased or otherwise procured by any lodge without the written consent of the Supreme Secretary, and the penalty for the violation of this law may be suspension or revocation of the charter, as the General Governor may determine.

**Sec. 73.6—Conferring Honor of Past Governor**—The honor of Past Governor may be conferred upon any member of a lodge in good standing in the following manner: A written resolution setting forth specifically the reasons therefor shall be filed with the lodge of which he is a member, shall be read by the Secretary thereof in open session and recorded upon the minutes thereof. If adopted by the lodge, a certified copy of the same under the seal of the lodge, shall be sent to the Supreme Secretary: Said certified copy shall be accompanied by a written request for the conferring of said honor, signed by the Governor and Secretary of the lodge under seal of the lodge, setting forth the action of the lodge upon said resolution as recorded in the minutes of the lodge. The Supreme Secretary shall submit the said resolution, certificate and request to the Supreme Council at its next regular session for its consideration. If the Supreme Council finds said resolution, certificate and request in proper form and deems it for the best interest of the Order to do so, it may confer the honor of Past Governor upon the mem-

ber mentioned therein, or it may decline so to confer such honor, and from its decision there shall be no appeal.

## Chapter 74—Membership Recognition

**Sec. 74.1—Cards of Recognition**—Three kinds of cards shall be recognized by the Order, viz: Transfer Cards, Readmission Cards, and Supreme Lodge Cards.

**Sec. 74.2—Prepared Forms Supplied**—Proper forms of Transfer Cards, Readmission Cards and Supreme Lodge Cards shall be prepared by the Supreme Secretary and shall provide for a complete lodge history of the holder in the Order, including the name and number of every lodge of which he has been a member, the dates and the amounts of sick benefits he has drawn, if any, the date and amount of his last payment of dues and statement as to whether or not he is a beneficiary member in good beneficial standing in the lodge issuing card, at the time of issue, and such other facts and data as may be of value to any lodge in which such card is deposited, provided that any applicant for admission by Transfer Card, Readmission Card, or Supreme Lodge Card, over fifty years of age, may not be admitted as a beneficiary member.

**Sec. 74.3—Issuance of Transfer Cards**—A Transfer Card may be granted by a majority vote of the lodge, at a regular meeting, to any member whose dues are paid thirty (30) days in advance, who has no charges pending against him, who shall have paid all fines, assessments and other charges against him, and has deposited one dollar with the Secretary, and who has, in open meeting, in person or in writing, made application therefor, and stated to the lodge at the time of such application, the name of the lodge to which he desires to be transferred; provided that when two or more lodges are of concurrent jurisdiction, the lodge from which transfer has been requested may exercise option and determine by majority vote whether transfer be issued.

**Sec. 74.4—Annulment after Issuance**—If a Transfer Card be granted to a member of any lodge, and the same be not deposited with another lodge within thirty days from its issue, it shall become void and of no effect, and the holder thereof shall remain a member of the lodge from which he received such card, and shall be amenable to all of the laws thereof. Any Transfer Card granted to a member may for proper cause be recalled or annulled by the lodge granting it. In the event a Transfer Card is cancelled in any manner and another card is desired, one dollar shall be paid therefor.

**Sec. 74.5—Responsibility of Issuing Lodge**—The lodge issuing such Transfer Card is liable for such sick benefits and funeral expenses as the member may be entitled to, until after the expiration of six months

from date of acceptance of such member by the lodge to which he transferred.

**Sec. 74.6—Procedure of Adopting Lodge**—If the holder of a Transfer Card desires to file the same with another lodge, he shall make the proper application in writing and accompany it with his Transfer Card and a duly executed and signed application blank. If the lodge finds the application satisfactory, the application shall be referred to the investigating committee, which shall be governed by the laws of the Order pertaining to other applications for membership, and the lodge may require an applicant for admission by Transfer or Readmission Card to pay as an admission fee such difference as may exist between the enrollment fee of the lodge issuing the card and the lodge receiving it, at the time such card was issued and received, respectively. The Secretary of the lodge to which transfer is sought shall immediately communicate with the Secretary of the lodge issuing Transfer Card and secure from him the original application and health statement made by the applicant when he originally applied for admission into the Order, and such original application and health statement must be before the lodge before the applicant for admission by Transfer Card is voted upon. Should the applicant be rejected, these papers must be returned to the lodge of which the applicant was a member, but if he is accepted, they shall become a part of the files of the lodge receiving him.

**Sec. 74.7—Effective Date of Benefits**—If such applicant be elected, his membership shall begin at the date of his election, but he shall not be entitled to sick benefits or funeral expenses from such lodge for any illness, disability or death within six months from the date of acceptance of such member by the lodge to which he transferred. Upon the election of any member holding a Transfer Card, the Secretary of such lodge shall, in writing, notify the lodge from which the member was transferred, and shall report to the Supreme Secretary in his next quarterly report.

**Sec. 74.8—Issuance and Rights of Holder of Readmission Cards**—Any member free from charges and in good standing in a lodge, desiring to withdraw therefrom, may make application in person or by letter to the Secretary of the lodge for a Readmission Card and the same shall be granted to him. A Readmission Card severs a member's connection with the lodge.

Should such a member at any future date desire to become a member of any lodge, such Readmission Card shall be attached to and become a part of his application therefor, with a fee of not less than one dollar; and the Secretary of the lodge receiving such card shall notify the Secretary of the lodge which issued the same, and the same course shall be followed as is required by the laws of the Order in admitting a member by Transfer Card.



**Sec. 74.9—Limitations on Holders of Readmission Cards**—A Readmission Card severs a member's connection with the lodge, and should he deposit his Readmission Card and be elected to membership in any lodge, he shall not be entitled to benefits therein until after the expiration of six months from the date of such election.

**Sec. 74.10—Supreme Lodge Transfer Card—How Obtained**—Any member of a lodge that has surrendered or forfeited its charter, who desires to make application for membership in another lodge, shall, within thirty days, make application to the Supreme Secretary for a Supreme Lodge Transfer Card, certifying to his membership in the defunct lodge. He shall accompany such application with his last official receipt, and dues for at least one quarter. The Supreme Secretary shall, upon receipt of such application and dues, issue a Supreme Lodge Transfer Card to such applicant and file the same with the lodge in which he desires membership.

**Sec. 74.11—Deposit and Dues of Applicant**—In admitting an applicant by a Supreme Lodge Transfer Card, the same course shall be followed as is required in admitting a member by Transfer or Readmission Card; but he shall not be entitled to benefits from such lodge until after the period of six months from the time of his admission therein. All dues paid to the Supreme Secretary by an applicant for membership upon a Supreme Lodge Transfer Card shall be paid to the lodge in which he may be admitted. If the applicant be rejected by a lodge, the dues paid to the Supreme Secretary as required herein shall be refunded to the applicant.

## Chapter 75—Dissolution of Lodge

**Sec. 75.1—Requirements**—A lodge cannot be voluntarily dissolved so long as seven members thereof in good standing object to such dissolution and unless a dispensation therefor shall have been secured from the General Governor. Notice of the purpose to dissolve a lodge must be given in writing or by printed circular to every member thereof at least five days prior to any regular or special meeting at which such action is proposed to be taken; said notice must be approved by the General Governor, and no disposition shall be made of any assets of the lodge except upon his approval.

**Sec. 75.2—Revoking of Charter**—In the event of the revocation of charter or the voluntary dissolution of a lodge, the paraphernalia, supplies, property, cash and other assets remaining after payment of all indebtedness of the lodge, shall be deemed to be the property of the Supreme Lodge and no disposition shall be made thereof other than in pursuance of instructions of the General Governor.

**Sec. 75.3—Transfer of Membership**—The members of a defunct lodge or a lodge no longer able to operate by itself may pass in a body into some other lodge provided a dispensation so to do has been secured from the General Governor, upon such terms, conditions and directions as the General Governor may determine.

## LAWS FOR MOOSE CLUB

### TITLE VIII ORGANIZATION

#### Chapter 81—Establishment of Club

**Sec. 81.1—Adoption of Resolution by Lodge—**A lodge may be permitted to establish and maintain a social club or home, when the same is established and maintained in accordance with the laws, rules and regulations provided and promulgated by the Supreme Council and upon the lodge agreeing, by resolution properly adopted, to be bound by all laws, rules and regulations and all lawful orders issued and promulgated by the General Governor in reference to such social clubs and homes.

**Sec. 81.2—Permit to Operate—**Before any lodge shall open, operate, or maintain any social club or home, it shall submit to the General Governor the general plans for operating and financing the same, and shall procure from him a permit to operate such social club or home; such permit to be issued upon such terms as the General Governor may prescribe and to be in effect until suspended or revoked by the General Governor.

Every social club or home shall at all times be maintained and operated by the lodge.

**Sec. 81.3—Incorporating—**The lodge shall incorporate under the Laws of the State or Province in which it is located, unless the General Governor shall determine such incorporating is not necessary.

The lodge shall be incorporated only in the name of the lodge and the Articles of Incorporation shall provide that membership in the lodge shall of itself carry with it membership in the corporation, and that suspension or expulsion from a lodge shall carry with it the same penalty in the corporation and said Articles of Incorporation and By-laws shall also provide that said lodge is incorporated in conformity with, subject to and under the jurisdiction and control of the laws for the regulation of lodges of the Loyal Order of Moose.

A copy of proposed Articles of Incorporation must be submitted to the General Governor for approval before being filed with the public officer authorized to receive same.

#### Chapter 82—House Committee

**Sec. 82.1—Membership on—**The government, regulation and control of all social clubs or homes operated

or maintained by a lodge shall be vested in a House Committee consisting of the Board of Officers. With the approval of the General Governor, the Governor may appoint additional members who shall serve at his pleasure. The Secretary and Treasurer of the lodge shall be respectively the Secretary and Treasurer of the House Committee; provided, however, that if the Secretary of the lodge does not desire to act as Secretary of the House Committee, the Governor may, with the approval of the General Governor, designate another of its members as Secretary of said committee. Said Secretary and Treasurer and any employee handling the funds of said social club or home shall give bonds under the supervision of the Supreme Secretary.

**Sec. 82.2—Provide and Enforce Rules**—The said House Committee shall prepare and formulate rules and regulations to govern the operations of said social club or home and the conduct of the members of the Order in connection therewith. Said rules, however, before becoming effective shall be submitted to the lodge and at a regular session thereof adopted in the same manner and form as by-laws are adopted by the lodge, and provided that said rules so prepared and so adopted by the lodge shall not become effective until first submitted, in duplicate, to the General Governor and by him in writing approved. That said House Committee, after said rules have been so adopted by the lodge and approved by the General Governor, shall promulgate and enforce the same; provided further, however, that no rule or regulation shall ever at any time be adopted or approved in connection with the operation or maintenance of a social club or home that is in any way in conflict with the laws of the Supreme Lodge, or with any law of the municipality, state or nation in which such lodge is located. The House Committee shall hold weekly meetings and the Secretary shall keep minutes thereof.

**Sec. 82.3—Printing and Publishing Adopted Rules**—The House Committee immediately upon the adoption and approval of such rules shall cause the same to be printed in a uniform manner in large, plain type upon heavy cardboard, displaying at the top thereof a black imprint of the official emblem of the Order, and copies thereof shall be posted in conspicuous places within such social club or home so maintained or operated by each lodge.

**Sec. 82.4—Provide a Bulletin Board**—Every social club or home maintained or operated by any lodge shall be provided with a bulletin board which shall be prominently placed and upon which shall be posted a copy of the laws or rules governing such social club or home, all special announcements and the names and addresses of all the sick and disabled members of the lodge in good standing.

**Sec. 82.5—Provide a Visitors' Register**—There shall be provided in each social club or home a proper regis-

ter where all visitors shall enroll their names and each member or members so introducing such visitors shall enroll their names and thereby become responsible for the conduct of such visitors while in such social club or home.

**Sec. 82.6—Employ Help**—The House Committee shall have full power and authority to employ such help as may be necessary properly to conduct and maintain such social club or home; provided, however, that it shall not employ any members of the House Committee, and provided further that the General Governor may grant a dispensation exempting the Secretary from the foregoing provision.

**Sec. 82.7—Monthly Settlement to Lodge**—At the first regular meeting of the lodge each month, the House Committee shall make a complete report of its business on the forms provided by the Supreme Lodge. Unless a special dispensation is obtained from the General Governor, the House Committee shall turn over to the Secretary of the lodge each month all cash exceeding a balance of \$500.00, provided that all club bills for merchandise, rents, salaries, repairs, incidentals, etc., have been paid. Such money shall be a part of the lodge funds. The House Committee shall, at the end of each month, turn over all its books, records and accounts to the Auditing Committee.

**Sec. 82.8—Handle and Account for All Finances**—The House Committee shall cause its Steward, or any other employee or committee who receives or handles any funds, to pay all cash so received to the Secretary of the House Committee and take his receipt therefor. It shall be the duty of the Secretary of the House Committee to deposit, at least once each week, in the bank designated by the House Committee as the depository of the funds, to the credit of the lodge, all moneys and other collections received by him, and shall make a deposit slip for each of such deposits in duplicate, leaving one such deposit slip with the bank, and giving the other to the Treasurer of the House Committee for each and every deposit so made, and secure a receipt therefor in the Secretary's Cash Book in manner and form as though the money had been delivered to the Treasurer of the House Committee instead of the deposit slip. Said funds shall never be withdrawn from or paid out of said bank except upon an official House Committee warrant voted by a majority of the members of the House Committee.

**Sec. 82.9—Enforce Decorum of Members**—It shall be the duty of every member to conduct himself while in and about any social club or home, conducted or operated by any lodge, in a gentlemanly and orderly manner, and it is hereby made the duty of the House Committee or any member thereof or any employee of any House Committee of any lodge immediately to eject from a social club or home or the premises upon



which it may be located, any person who fails to comply with this law, and such person shall thereafter be denied the privileges of such social club or home, at the discretion of the House Committee, provided however, that the authority of the House Committee to suspend the club privileges of any member shall in no way affect his lodge membership status.

## **TITLE IX** **DUTIES AND RESTRICTIONS**

### **Chapter 91—Restrictions on Lodges**

**Sec. 91.1—Not to Acquire, Sell or Improve—**Before any lodge shall make a commitment to or acquire by purchase or otherwise any real estate, or mortgage or sell the same, or construct or substantially improve a building, or execute any lease, it shall adopt a resolution authorizing such action at a meeting held after five days' written notice mailed to each member, and shall furthermore procure from the General Governor a written fraternal permit therefor.

**Sec. 91.2—Not to Establish Clubs Until Compliance—**A lodge shall not be permitted or allowed to establish a social club or home or permit any of the members to do so, or to hold out that any such social club or home is connected with a lodge, unless the said social club or home is established, maintained and operated in full compliance with the laws, rules and regulations adopted by the Supreme Lodge or the Supreme Council thereof.

**Sec. 91.3—Not to Use Moose "Name or Emblems"—**A member or members of any lodge shall not be allowed to use the name "Moose" or any of the emblems or insignia of the Order, which are intended to convey the impression that a lodge or any department of any lodge, is in any way connected with such social club or home, unless such club or home is established and governed in compliance with the laws, rules and regulations of the Supreme Lodge or the Supreme Council thereof, in reference to the establishment and government of social clubs or homes.

**Sec. 91.4—Not to Appropriate Funds for Clubs—**A lodge shall not appropriate or use any of its funds for the purpose of maintaining or operating a social club or home without first obtaining a special dispensation from the General Governor.

**Sec. 91.5—Not to Extend Credit—**Credit shall never at any time be extended in any social club or home maintained or operated by any lodge.

### **Chapter 92—Duties Placed Upon Club Operation**

**Sec. 92.1—To Prevent Admission of Non Members—**There shall never at any time be admitted to any social club or home maintained or operated by any lodge, any person who is not a member of some lodge in good standing, and it is hereby expressly made the duty of each member of the Order when so requested

to submit for inspection his receipt for dues to any member of any House Committee or its authorized employee.

**Sec. 92.2—To Prevent Admission—Exceptions—**

Only members shall be permitted in any social club or home operated or maintained by any lodge, except upon the invitation of the House Committee or upon the invitation of a member in good standing with the consent of the House Committee, and in the event any such person be admitted upon such invitation to any such social club or home, the member or members so inviting such person or persons shall be responsible for their conduct in such social club or home, and shall be responsible for any property damaged or carried away by any such visitor.

**Sec. 92.3—To Prevent Admission—Undesirables—**

No person of vicious or immoral reputation, or in a state of intoxication or reputed to be a habitual drunkard, shall be admitted to any social club or home maintained or operated by any lodge.

**Sec. 92.4—To Prevent Admission—Minors—**

The admission of minors to any social club or home is strictly prohibited, except at such times and under such circumstances as the House Committee may deem advisable.

**Sec. 92.5—To Prohibit Soliciting and Advertising—**

No subscription or agreement shall be circulated, nor article exposed for sale, nor circulars, pamphlets or other reading matter shall be left in or taken away from any social club or home, and no advertising of any kind whatsoever shall be permitted upon the premises of any social club or home, unless duly authorized in writing by the House Committee.

**Sec. 92.6—To Prohibit Purchases by Non-Members**

No person, whether a visitor or otherwise, not a member in good standing, shall be permitted to purchase anything whatsoever in any social club or home so maintained or operated by any lodge.

**Sec. 92.7—To Close Club at Certain Hours and Times—**

No social club or home shall be permitted to remain open, nor shall any member be permitted to remain therein during the regular meeting of the lodge, the funeral of a member, or the annual Memorial Services. At all other times, the social club or home shall open and close at certain hours, the same to be designated by the House Committee. At the hours so designated for closing, all persons must vacate the social club or home, and it must be kept closed thereafter until the regular hour for opening.

**Chapter 93—Restriction on Membership**

**Sec. 93.1—Responsibility for Damage—**

A member shall be responsible for the removal of or damage to any property of any social club or home by himself

or any visitor introduced by him, and shall immediately pay the full value of such property damaged or removed, to the House Committee.

**Sec. 93.2—Unlawful to Possess Keys—**It shall be unlawful for any person, except members of the House Committee or their employees, to have or retain any key or keys to any social club or home unless it be provided in the rules approved by the General Governor that keys may be distributed.

## PENAL CODE

### TITLE XI OFFENSES

#### Chapter 111—Relating to Lodges

**Sec. 111.1—Revoking or Suspending Charter for Violations**—A lodge may have its charter suspended or revoked for any of the following causes, in addition to all other causes hereinbefore mentioned:

1st. Violating any of the provisions of the Ritual, laws, rules, regulations or orders of the Supreme Lodge, or the by-laws of such lodge, or any lawful orders issued or promulgated by any of the officers of the Supreme Lodge.

2nd. By allowing or permitting any conduct in the lodge that will bring, or tend to bring discredit to the Order, or any officer or member thereof, by slander, insinuation or other forms of detraction that will have a tendency in any way to cause dissension in the lodge.

3rd. Preferring or permitting any of its members to prefer false charges against the Supreme Lodge or any lodge, or any officer, board, committee, or member of the Order, or maliciously making a statement, the purpose or effect of which is to injure the Supreme Lodge, Mooseheart, or any lodge, or any officer or committeeman thereof, or the reputation of the Order, the Supreme Lodge, or any lodge, or any officer or committeeman of either.

4th. For any insubordination, or any contemptuous, captious or any unconscionable criticism of a superior authority or permitting such by any of its members.

5th. For directly or indirectly circularizing, displaying, composing, issuing, printing, publishing or otherwise being a party to any resolution, exhibit or other document relative to any of the laws, Rituals, statistics, financial or general management of the Supreme Lodge or Mooseheart, or causing or being a party to any publication or any book, pamphlet, or leaflet, circulated or displayed by any committee thereof, or otherwise, and thereby communicating either to other lodges or committees or members thereof or strangers, any abuse or criticism of any officer, lodge, committee or member.

6th. In permitting any malicious, unjustifiable or abusive statements to be made, published or circulated concerning any officer, member, or committee, or permitting any of its members to do so.

7th. Making or using any paraphernalia or lodge supplies for lodge use, in any way connected or represented as being connected with the Supreme Lodge, or any lodge, other than those procured from and by the authority of the Supreme Lodge.

8th. For failure to make and transmit each and every report required by the laws of the Supreme Lodge or requested by any order, rule or regulation promul-



gated by the executive officers thereof, or for failure to send in, transmit or pay over the Supreme Lodge dues, as the laws provide.

9th. For instituting, establishing, beginning or maintaining the publication of any magazine, newspaper or other periodical devoted, or represented as being devoted to the interests of the Order, Mooseheart or Moosehaven, or any lodge, or purporting to be a Moose publication in whole or in part, without first securing written permission therefor from the Supreme Council.

**Sec. 111.2—Exhaust All Means of Redress**—The various tribunals provided by the Order shall have jurisdiction to try and determine the rights of members under the laws of the Order, and no member or lodge or unit of the Order shall have the right to apply to the civil courts for the enforcement of any right or the determination of any grievance arising under or by virtue of the laws of the Order.

**Sec. 111.3—Refusal to Obey Mandate—Penalty**—Whenever the Director General, Supreme Governor, General Governor, Supreme Council, the Supreme Convention or any other regularly constituted authority of the Supreme Lodge has issued a mandate in accordance with the law upon any lodge and such lodge refuses to obey such mandate within thirty days, it shall be deemed guilty of contempt and for such contempt may be fined in a sum not exceeding \$100.00 by the authority which made the mandate. If such fine is not paid within ten days from the date of notice to the lodge, the charter of such lodge shall be deemed suspended.

#### **Chapter 112—Relating to the Officers and Members**

**Sec. 112.1—General Construction**—All members of the Order are required to observe the standards of morality prescribed by the Ritual, the laws of the Order and the laws of the land. The enumeration of the particular offenses in these laws or in any law of the Order shall not be construed as a codification of all of the penal laws of the Order. All acts which may reasonably be construed as a violation of the rules of good conduct shall be regarded as conduct unbecoming a Moose and punishable as such by the constituted authorities of the Order.

**Sec. 112.2—Causes for Fining or Expelling Officer of Supreme Lodge**—Any officer or member of the Supreme Lodge may be removed, fined, suspended or expelled for any of the following causes, in addition to all other causes hereinbefore mentioned:

1st. Neglect of official duty.

2nd. Conduct that may reflect discredit upon the Order or disturb the peace and harmony thereof; provided, however, that such removal can only be brought about by charges being filed with the Supreme Forum, in such form and under such rules of procedure and



practice as the Supreme Forum may from time to time determine.

**Sec. 112.3—Reasons for Discharge of Officers or Members**—Any member or officer of any lodge may be fined, removed, suspended or expelled from his office or from his lodge, or from both, for any of the following causes:

1st. Dishonest or immoral conduct tending to reflect discredit upon the Order.

2nd. Violation of all or any part of the membership obligation.

3rd. Intentionally disclosing by any means the name or names of any member or members who opposed or reported adversely upon an application for membership in any lodge, through which any person not a member of the lodge may obtain knowledge of such action.

4th. For intentionally disclosing to anyone not a member, any business or remarks of a member made during any session of a lodge, unless authorized so to do.

5th. Displaying or exhibiting the Ritual, or paraphernalia of the Order on occasions other than those provided for in the Ritual and laws.

6th. Using any representation of any emblem that is now or may hereafter be adopted by the Supreme Lodge for advertising purposes for private gain.

7th. Refusing to appear as a witness, if notified to do so, in conformity with the laws or rules of the Supreme Lodge.

8th. Conviction of any crime, the penalty for which is, or may be, imprisonment, in which event his name shall be stricken from the roll of membership.

9th. Preferring false charges against any member of either the Supreme Lodge or any lodge, or maliciously making false or untrue statements concerning the character of any member or officer, or interfering with the performance of the duties of any member or officer or representative of any such office.

10th. Dishonest or immoral conduct, habitual drunkenness, or any other disreputable habits.

11th. Profane, indecent or unbecoming language or conduct in the hall where any lodge is in session, or about to be in session, or has just closed such session, or in the anteroom, or hallway or entries thereto.

12th. Embezzling or misappropriating any of the funds of any lodge, or of any committee of any such lodge or Supreme Lodge, or any other misapplication or misappropriation of the funds or other property, and for failure to make prompt report of any and all monies coming into his possession or control either as an officer, committeeman, or member.

13th. Discrediting the Supreme Lodge, Mooseheart, or any lodge, or any board, or committee of either, or any officer or member of either the Supreme Lodge or

any lodge by slander, libel, gossip or other forms of detraction.

14th. Preferring false charges against the Supreme Lodge, Mooseheart, or any lodge, any board or committee of either, or officer or member of either the Supreme Lodge, Mooseheart or any lodge, or maliciously making statements, the purpose of which may be to injure the Supreme Lodge, Mooseheart, or any lodge, or any board or committee, officer or member of either said Supreme Lodge, Mooseheart, or any lodge.

15th. Engaging in an immoral, disreputable, or unlawful occupation.

16th. Failure to comply with any of the orders, rules, regulations or mandates of the Director General, Supreme Governor, General Governor, Supreme Council, the Supreme Forum, or any other officer or tribunal of the Supreme Lodge, which, by the laws, has authority to issue such orders or mandates.

17th. Any insubordination, or any contemptuous, captious or other unconscionable criticism of a superior officer or authority.

18th. Directly or indirectly circulating, compiling, composing, issuing, printing, publishing or otherwise being a party to any resolution, exhibit or other document relative to the laws, decisions, regulations, Ritual, statistics or financial or general management of the Supreme Lodge, Mooseheart, or any branch thereof, or causing or being a party to any publication in any newspaper, book, pamphlet, or leaflet issued or circulated or displayed by any lodge or committee thereof, or otherwise, and thereby communicating either to other lodges or committees or members, or strangers, or directly or indirectly circularizing, composing, issuing, printing, publishing, or otherwise being a party to any resolution, exhibit, or causing or being a party to any publication in any newspaper, pamphlet or leaflet issued or circulated or displayed by any lodge or committee thereof, or otherwise, wherein any abuse or wrongful criticism of any officer, lodge, committee or member thereby may be communicated either to other lodges or committees or members.

19th. Advertising directly, or indirectly, any private business or enterprise as being carried on by or under the auspices of the Supreme Lodge, or any lodge, except by written permission of the General Governor or the Supreme Council.

20th. Furnishing any information either by statement or otherwise, either directly or indirectly, that conveys any false information regarding any applicant for admission to Mooseheart or Moosehaven.

21st. Using his official membership receipts, or to use or expose any name or emblem of the Order on labels, signs, cards, periodicals, business literature of any kind or character, or in any manner using his relation or connection with the Order for commercial

or political purposes, or in any business transaction.

22nd. For organizing or becoming a member of any society or organization limiting its members to members of the Loyal Order of Moose, which organization or society is not expressly authorized by the laws of the Supreme Lodge or by dispensation or permission of the General Governor or Supreme Council.

23rd. Instituting, establishing, beginning or maintaining or in any way directly or indirectly being a party to the beginning, establishing or maintaining the publication of any magazine, newspaper or other periodical devoted to or represented as being devoted to the interests of the Supreme Lodge, or any lodge, or purporting to be a Moose publication.

24th. For violating any of the provisions of the law, rules, regulations or orders of the Supreme Lodge, or the by-laws of his lodge, or any lawful orders issued or promulgated by any of the officers of the Supreme Lodge, or of the Officers of his lodge.

**Sec. 112.4—Acquiring Membership by Fraud—**Any person who shall acquire membership in the Order or in any unit of the Order by means of any false statement or misrepresentation shall be deemed guilty of an offense against the laws of the Order and shall, upon conviction, be punished by suspension or expulsion.

**Sec. 112.5—Penalty for Subversive Activities of Lodge—**Any member of this Order who becomes a member of the Communist Party or any other subversive organization, or who either directly or indirectly participates in the activity of said party, or said subversive organization, or who advocates the overthrow of our government by force, upon being found guilty thereof, shall be expelled from the Order.

**Sec. 112.6—Penalty for Violations—**Upon the conviction of any member or members or lodge of any of the offenses hereinbefore mentioned, he or they may be reprimanded, fined, suspended or expelled, as may be determined by the tribunal before which such hearing was had. Should a lodge, or any of its members, refuse, fail or neglect to take the proper steps to punish any member or members who have committed any of the offenses hereinbefore mentioned, then charges may be preferred by any member of any lodge against such offending member or members who have committed any of the offenses hereinbefore mentioned, then charges may be preferred by any member of any lodge against such offending member or members before the General Governor, whose duty it shall be to refer the charges to a member for hearing, trial and judgment; and if the member or members are found guilty by such tribunal trying him, the penalty shall be fixed by such tribunal, from which decision an appeal may be taken to the General Governor, as provided by law.

**TITLE XII  
PROCEDURE**

**Chapter 121—Detection—Filing of Charges  
vs Members**

**Sec. 121.1—Duty to Prefer Charges—**It shall be the duty of every member of a lodge who has knowledge or information that any member has violated or is violating any of the laws, rules, regulations or orders to prefer charges against such member before the proper officer or tribunal.

**Sec. 121.2—Charges Submitted to Governor—**Any member or members desiring to prefer charges against any other member shall submit such charges in writing to the Governor of the lodge of which the accused is a member. He or they shall state explicitly the nature and character of the offense, the time, and place, when and where such offense was committed, and shall sign such accusations. The person or persons signing such written accusation shall not be disclosed by the Governor or any other member, except as hereinbefore provided.

**Sec. 121.3—Investigating Committee—Procedure—**Upon receiving a copy of such charges, the Governor of the lodge shall appoint a special committee of three members to be known as the "Investigating Committee," which committee shall proceed without delay to investigate such charges. If, after the investigation, a majority of the Investigating Committee be of the opinion that the charges are not well founded, the Committee shall immediately report such conclusions to the Governor, who shall forthwith forward such charges, together with the report of such committee, to the General Governor, who may consider such charges and the report of said committee upon the request of any interested party and direct the charges to be proceeded with. If, after such investigation, a majority of the Investigating Committee be of the opinion that the charges are well founded, they shall immediately report their findings in writing to the Governor, who shall attach such report to the written charges. At the next regular meeting of the lodge, in open session, the Governor shall read the charges, the name or names of the accuser or accusers, and the findings of the committee, and direct the Secretary to record such proceedings in the minutes, and it is hereby made the duty of the Secretary to make a complete record in the minutes of the lodge immediately upon receipt thereof. The names of the members of such committee shall not be revealed until its report has been made to the lodge.

**Sec. 121.4—Charges Mailed to Accused and General Governor—**Within forty-eight hours after the close of the session of the lodge when such charges and report of such committee are delivered to the Secretary, the Secretary shall mail to the accused member or mem-



bers, or deliver to him or them in person, a certified copy of the charges against him or them, and shall, at the same time, mail to the General Governor all the original papers, including the charges and the findings of the Investigating Committee.

**Sec. 121.5—Receipt of Charges by General Governor**—The General Governor, upon receipt of such charges, and such report of the Investigating Committee from the Secretary, shall appoint a disinterested and competent member of some lodge as a commissioner to hear, try, and determine such charges.

**Sec. 121.6—Accused Not to Have Privileges**—When charges have been filed against any member and the Investigating Committee has reported that such charges are well founded, or the General Governor shall order said charges proceeded with, the accused shall not thereafter and pending the trial, have the right to attend any meeting of any lodge, nor have any of the privileges of membership.

#### **Chapter 122—Filing of Charges Against Officers**

**Sec. 122.1—Against Governor**—If charges should be preferred against the Governor, they shall be presented to the Junior Governor, who shall perform all the duties of the Governor that pertain to the trial. If charges should be preferred against both the Governor and the Junior Governor, the Prelate shall assume the duties of the Governor in connection with the trial; and if charges should be preferred against the Governor, Junior Governor and Prelate, the Secretary shall immediately notify the General Governor, who shall assume complete jurisdiction over the entire matter and the affairs of the lodge.

**Sec. 122.2—Against Secretary**—When charges are preferred against the Secretary, all the duties pertaining to the trial as assigned to the Secretary by the laws, shall be performed by the Treasurer.

**Sec. 122.3—Suspension from Office**—When charges are preferred against the Secretary or Treasurer, and the Investigating Committee has reported such charges well founded, the Governor shall immediately declare the officer against whom such charges are pending, suspended from office, pending the determination of the charges, and the Governor shall take charge of the office and demand and receive from such officer all money, books, records, keys, and all other lodge property, and the Governor shall forthwith designate some member to perform the duties of such office during the period of suspension, and in the event such officer is found guilty of any of the charges, the said appointee of the Governor shall continue to perform the duties of the Secretary or Treasurer, until a successor is regularly elected. If the accused be found not guilty, he shall immediately be reinstated. If the penalty fixed on such charges shall be "Removal from Office," such



officer shall thereafter be ineligible to hold office in a lodge.

### **Chapter 123—Commissioner To Conduct Trial Of Accused**

**Sec. 123.1—Appointment**—When any officer or member of a lodge or other unit of the Order is suspended by the General Governor, or his duly designated representative for that purpose, the Supreme Secretary, or by any other officer of the Supreme Lodge as in the laws provided, the statement upon which such suspension is made shall constitute the charge, and the General Governor shall forthwith appoint a Commissioner to hear, try and determine such charges without first being referred to an Investigating Committee.

**Sec. 123.2—Notice of Time, Place and Nature of Hearing**—Immediately upon receipt of his appointment as Commissioner and a copy of the charges and report of the Investigating Committee upon such charges from the General Governor, the member so appointed by him to hear, try and determine such charges shall immediately fix the time and place for the hearing thereof, and shall notify the Secretary immediately to notify the accused and each of them by written notice either personally served upon the accused and each of them or by depositing one copy of said notice, with the last known address and stamp upon the envelope; in a post office, one so addressed to each of the accused, and that said notice shall be served upon the accused at least five days before the time set for the hearing of said charges.

**Sec. 123.3—Conform in Procedure to Local Practices**—At the time and place set for the hearing of the charges, the Commissioner shall proceed with the trial of such charges and such trial shall be conducted as nearly as possible in conformity with the rules of practice in the courts of general jurisdiction in the state or province in which said trial is being held.

**Sec. 123.4—Continuances**—The Commissioner shall have full authority and power to grant such continuance to either party as he may deem wise and just upon such showing as he may deem necessary or proper.

**Sec. 123.5—Secretary to Serve as Clerk**—The Secretary shall attend the trial and act in the capacity of clerk for the Commissioner who is hearing said charges and shall be under the orders and jurisdiction of such Commissioner during said time.

**Sec. 123.6—Entering of Plea by Accused**—The Secretary shall first read the charges in full and the accused shall be required to plead "guilty" or "not guilty" thereto. If the accused fails or refuses to plead, the Commissioner shall direct that a plea of "not guilty" be entered upon the record by the Secretary. A plea of "guilty" or "not guilty" shall be the only plea required of the accused. If the accused shall plead

"guilty" to the charges, the Commissioner shall cause such plea to be entered upon the record and no further proceedings in the hearing of the case will be necessary except to enter the findings of the Commissioner.

**Sec. 123.7—Hearing on Plea of "Not Guilty"**—If the accused shall plead "not guilty" or a plea of "not guilty" be entered in his behalf, hereinbefore provided, the Commissioner shall proceed to hear the testimony and the argument of the parties or their counsel.

**Sec. 123.8—Securing of Witnesses**—The Secretary shall summon, in writing, over his signature and under the seal of the lodge, all persons desired as witnesses by the accuser or accusers, the accused or any of them, or the Commissioner in charge of the trial, when requested so to do. Such summons may be served by reading by the Secretary, or someone whom he may request to serve the same, or by enclosing a copy of the summons to the witness at his or her last known place of residence duly registered and deposited in the mail.

**Sec. 123.9—Administration and Form of Oath**—The Commissioner shall, before any witness is examined or allowed to testify, qualify such witness by administering to him the following oath or affirmation: "You do solemnly swear (or affirm) upon your honor as a member of a lodge of the Loyal Order of Moose, that you will true answer make to all questions propounded to you touching all members involved in this hearing." If such witness be not a member of a lodge, he or she shall be qualified by oath or affirmation as the Commissioner may determine and shall be examined in the same manner as a member.

**Sec. 123.10—Rules of Evidence**—The Commissioner shall receive as evidence such testimony, records and documentary evidence as may be offered by either of the parties involved, subject to the rules for admission of evidence in the trial of cases in such jurisdiction, whenever the same can be properly and conveniently applied to the proceedings herein provided for.

**Sec. 123.11—Reporter and Record of Proceedings**—The Commissioner shall appoint a competent and disinterested member who is a shorthand reporter, if that be practicable and convenient; if not, he shall appoint some non-member who is a shorthand reporter, to take down and make a complete report of all the proceedings and of all the testimony received, together with all objections and rulings and exceptions thereto, in reference to the admission or exclusion of evidence. At the close of the hearing, said shorthand reporter shall prepare such memoranda or notes of the proceedings as the Commissioner may desire; but he shall not be required to provide a complete transcript of the proceedings unless requested to do so for the purpose of appeal; and, if the decision be appealed from, said

reporter shall then furnish a complete transcript of the proceedings to the person desiring to perfect said appeal, upon the payment by said appellant of the reasonable cost of the preparation thereof.

**Sec. 123.12—Taking of Depositions—**The Commissioner shall have the right to cause the deposition of any witness or witnesses to be taken, whose presence at the trial cannot be secured, and for such purpose he may appoint a competent and disinterested member to take such deposition. The opposite party shall have due notice of the time and place of the same, together with the name of the witness or witnesses to be examined and shall be entitled to attend and examine such witness or witnesses in person or by counsel. Such testimony shall be reduced to writing and shall be duly certified by the person taking the same, securely sealed and immediately filed with the Secretary.

**Sec. 123.13—Counsel—**The accused shall have the right to the service of a member as counsel. The Governor of the lodge in which such trial is conducted may select a member to represent it and its members at such trial, or the General Governor may request some member to appear and act as counsel in the trial of said case. The person or persons preferring such charges may be represented by a member as counsel, and if so, such counsel shall be permitted to participate in the proceedings.

#### **Chapter 124—Commissioner's Findings**

**Sec. 124.1—Determination by Commissioner—**The Commissioner, as soon as possible after the completion of the taking of the testimony on such charges, shall proceed to determine the guilt or innocence of the accused, and fix such penalty therefor as he may deem just and proper.

**Sec. 124.2—Procedure When Accused Found Innocent—**If the Commissioner shall decide that the accused is not guilty, the said findings, judgment or decree shall immediately be submitted to the Secretary, who shall read same in open session at the next meeting after the receipt of the same, making note in the minutes that the accused was by the Commissioner found not guilty, and such finding shall be the judgment, order or decree in such proceeding.

**Sec. 124.3—Procedure When Judgment of "Guilty"**  
—If the Commissioner shall determine that the member or members are guilty of one or more of the charges preferred against him or them, he shall fix the penalty therefore, and shall immediately transmit his findings, decision or decree thereon, fixing the penalty therein to the Secretary, who shall read the same in open session at the lodge at its next regular meeting after receipt of the same; and said finding, order or decree of the Commissioner shall then be spread in full upon the records of the lodge, which shall be the judgment in the case; and it is hereby

expressly made the duty of the Governor of said Lodge to see that the orders and judgment so entered shall be fully and completely carried out.

**Sec. 124.4—Suspension From the Lodge**—A member found guilty of any charge, as herein provided, and sentenced to suffer suspension from membership, may be reinstated after the expiration of the period of suspension upon the payment of all fines and costs imposed as a part of the punishment, and full payment of all dues for the entire period of suspension; provided, however, that all reinstatements must be by ballot as in the case of new members. Any member suffering a sentence of suspension shall not, during the period of such suspension, be dropped from the roll of membership for the reason of non-payment of dues. Any member under suspension shall not be eligible to membership in any lodge of the Order until after the expiration of such period of suspension and full compliance on his part with every element of the penalty imposed, and a member who is suspended shall not be eligible to membership in any lodge other than the one from which he was suspended.

**Sec. 124.5—Expulsion From the Lodge**—A member expelled from any lodge or other unit of the Order shall not be eligible again to become a member of the lodge or other unit of the Order except in accordance with the terms of such expulsion and through the lodge or unit from which he was expelled. A member expelled from a lodge or other unit without terms or conditions cannot again become a member of the lodge or any unit of the Order except upon a dispensation of the General Governor.

Expulsion from a lodge or the Order works expulsion from each lodge of which such person was a member and from all other units or organizations of the Order; provided, however, that expulsion from a higher or additional degree other than the first degree shall work expulsion from such degrees only and other degrees higher than the one from which the member was expelled.

**Sec. 124.6—Costs of Trial**—All of the costs incidental to the trials herein provided for, including compensation of \$10.00 per day for the time actually consumed in the work, the necessary transportation expenses for the Commissioner, shall be paid by the lodge of which the accused was a member.

### **Chapter 125—Appeals**

**Sec. 125.1—Manner of Appeal by Members**—Any member of a lodge shall have the right to appeal in the following manner:

1st. From the Governor of the lodge to the General Governor.

(This does not refer to questions of parliamentary procedure—see Robert's Rules of order.)

2nd. From the lodge to the General Governor.

3rd. From any finding, order, decree or judgment of a Commissioner to the General Governor.

4th. From any ruling, decision, finding, order, decree or judgment of the General Governor to the Supreme Forum.

**Sec. 125.2—Appeal to General Governor**—Upon an appeal from a lodge to the General Governor, written notice of such appeal shall be given by the appellant to the General Governor within fifteen days after the decision from which the appeal has been taken, and not later than fifteen days after giving such notice of appeal by filing with the Secretary his statement of grounds or reason for the appeal, with exhibits, if any, and brief of counsel. Such appeal must be accompanied by a certified copy of the minutes pertaining to the case and such other documents as may be needed to determine the question involved.

**Sec. 125.3—Records on Appeal to General Governor**—It shall be the duty of any officer having in his possession any minutes or other records necessary to afford a clear understanding of the merits of any matter on appeal from the lodge to the General Governor to furnish the appellant or appellants at his or their cost, with copies of such records upon demand, same to be filed and certified to, by them, within the time provided for the filing of such papers with the General Governor.

**Sec. 125.4—Limitation on Appeal to Supreme Forum**—In all cases of appeal to the Supreme Forum from the General Governor, which matters were brought by an appeal from the action of the lodge to said General Governor, only such matters shall be considered by the Supreme Forum as were contained in the appeal to the General Governor. No evidence shall be allowed or considered, other than that presented and considered by the said General Governor.

**Sec. 125.5—Procedure on Appeal of a Member**—Any member or members convicted of any charge by finding, order, decree or judgment of a Commissioner, shall have the right of appeal to the General Governor, who may modify, reverse or affirm any finding in whole or in part, either on the record or on a hearing de novo, and his judgment, finding or decree shall be final and conclusive unless appealed from. In the event such appeal is desired by either the lodge or the member or members so convicted, the parties so desiring to perfect such appeal shall give notice within fifteen days and after giving such notice of appeal, shall perfect the appeal by filing with the Secretary his statement of grounds or reasons for the appeal, with exhibits, if any, and brief of counsel. The record and files, or a copy thereof, shall be, by the Secretary, forwarded to the General Governor, under the seal of the lodge, and in the event the finding, order, decree or judgment of the Commissioner



shall be affirmed by the General Governor, the decision, finding, order or decree of the General Governor shall be conclusive and final unless either of the parties to said proceeding appeal from the decision, finding, or decree of the General Governor to the Supreme Forum. In such event notice of that fact shall be given within fifteen days in writing to the Secretary by the parties so desiring to take such appeal to the Supreme Forum, and not later than fifteen days after giving such notice of appeal shall perfect the appeal by filing with the Secretary his statement of grounds or reasons for the appeal, with exhibits, if any, and brief of counsel, and a copy thereof shall be sent by the Secretary to the General Governor under the seal of the lodge, and a copy thereof to the Supreme Secretary in his capacity as Clerk of the Supreme Forum, under the seal of the lodge, and the General Governor shall immediately, upon receipt of such notice, forward to the Supreme Secretary as Clerk of the Supreme Forum the entire record of said proceedings.

**Sec. 125.6—Costs of Transcript and Appeal—**Any member or members who shall have given notice of appeal from the decision, finding, judgment, order or decree of the Commissioner, shall within fifteen days from the time of serving said notice, pay to the Secretary of the lodge the cost of said appeal, which shall include the reasonable costs and expenses of the Secretary in procuring the certified copies of the records of the lodge pertaining to such matters appealed from; and the cost of the transcript of the proceedings and evidence in the trial of said case; and it is hereby made the duty of the Secretary, immediately upon payment of such costs as herein provided, to prepare a complete transcript of the proceedings in said matter, including therein a transcript of the proceedings and the evidence taken at the trial, which transcript shall be immediately upon completion forwarded by him to the General Governor.

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### **CERTIFICATE OF AUTHENTICATION**

We, the undersigned officers of the Supreme Lodge of the World, Loyal Order of Moose, hereby certify that we have carefully inspected the foregoing codification of the Laws of the Order, and find the same true and correct as enacted by the Supreme Lodge. We further find that the same are in accordance with the proceedings of the Conventions of the Supreme Lodge.

In witness whereof we have hereunto subscribed our names and affixed the Seal of the Supreme Lodge this 1st day of October, A.D. 1967.

**CARL A. WEIS**  
Supreme Secretary  
(SEAL)

**GEORGE R. REILLY**  
Supreme Governor  
**RALPH D. MOORE**  
General Governor



MAR 1 1971

E. ROBERT SEAVER, CLERK

**In the Supreme Court of the  
United States**

October Term, 1970

~~No. 1292~~**70-75**

MOOSE LODGE NO. 107,

*Appellant*

v.

K. LEROY IRVIS, and WILLIAM Z. SCOTT,  
Chairman, EDWIN WINNER, Member, and  
GEORGE R. BORTZ, Member, LIQUOR CON-  
TROL BOARD, COMMONWEALTH OF  
PENNSYLVANIA

*Appeal From the United States District Court for  
the Middle District of Pennsylvania.*

**MOTION TO AFFIRM**

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*Motion To Affirm*

IN THE  
SUPREME COURT OF THE UNITED STATES

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October Term, 1970  
No. 1292

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Moose Lodge No. 107, Appellant

v.

K. Leroy Irvis, and William Z. Scott, Chairman, Edwin  
Winner, Member, and George R. Bortz, Member, Liquor  
Control Board, Commonwealth of Pennsylvania

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MOTION TO AFFIRM

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K. Leroy Irvis, an appellee in the above-captioned case, moves to affirm on the ground that it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument.

*Statement***STATEMENT**

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This is a direct appeal from the final decree of a three-judge District Court declaring invalid the club liquor license issued to appellant by the Pennsylvania Liquor Control Board pursuant to the Pennsylvania Liquor Code and enjoining the Board from issuing any club liquor license to appellant as long as it follows a policy of racial discrimination in its membership or operating policies or practices.

Appellee Irvis brought this action following appellant's refusal to serve him on its premises solely because he is a Negro. Irvis, majority leader of the Pennsylvania House of Representatives, had been taken to appellant's premises as the guest of a member. Pointing to the extensive alcoholic beverage regulatory scheme established by the Commonwealth of Pennsylvania by and under the Pennsylvania Liquor Code, Irvis asserted that the racial discrimination practiced by appellant necessarily bore the attributes of state action. While agreeing that appellant was otherwise a purely private organization and free to engage in such discrimination if it so desired, Irvis contended appellant could not simultaneously enjoy the privilege of holding and using to its benefit a Pennsylvania club liquor license. Accordingly, Irvis asked that the Commonwealth of Pennsylvania be removed from participation in appellant's pattern of racial discrimination by revoking appellant's club liquor license.

The court below agreed with Irvis' characterization of the Pennsylvania alcoholic beverage control system as



one necessarily involving the State in a pattern of discrimination practiced by a club licensee. Dealing with the single question thus presented—whether the State's involvement constituted state action forbidden by the Equal Protection clause of the Fourteenth Amendment—the court below held that it did and granted appropriate relief which eliminated this involvement and left appellant free to adhere to its policy of racial discrimination unencumbered by possession of a liquor license.

## ARGUMENT

Apart from the factual context in which this case arises, it presents no novel or substantial feature. For decades this Court has acted to strike down state involvement in racially discriminatory actions of private parties, be the State's participation direct or indirect, central or peripheral. *Shelley v. Kraemer*, 334 U.S. 1; *Burton v. Wilmington Parking Authority*, 365 U.S. 715; *United States v. Guest*, 383 U.S. 745. Appellant's attempt to portray the case as one involving only purely private action is not supported by the facts, and its characterizations of the opinion of the court below as doing "irreparable damage to the constitutionally protected rights of privacy and of private association while drawing in the process a wholly unsupportable distinction between racial and religious discrimination" and also as disregarding congressionally established limits to discrimination are misplaced and legally unsupportable.

*First:* Contrary to appellant's assertion, this case does not involve the question of whether the mere issuance of a liquor license to a private club constitutes "state action." Licensure of private clubs by the Liquor Control Board is part of an intensive and extensive complex liquor control and regulatory system whereby Pennsylvania has chosen to exercise to the fullest its authority in this field.<sup>1</sup> The summary of this system recited by the

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<sup>1</sup> Pennsylvania is one of the states in the group known as "monopoly" states. It not only has established an extensive

### Argument

court below (Appendix to appellant's Jurisdictional Statement, pages A5 to A7) provides only a verbal skeleton to a full-blown State operation which injects the State into every aspect of the conduct and operations of those who deal with it. Less than this was sufficient for this Court to find forbidden governmental involvement in *Public Utilities Commission v. Pollak*, 343 U.S. 451.

Further, the grant of a club liquor license by Pennsylvania to appellant involves more than an administrative grant of authority to perform acts and to enjoy benefits available to the public in general. The relationship between State and licensee can be described as "symbiotic," for the latter thereby obtains a valuable privilege not freely available and the former obtains a source of funds not otherwise present. In so doing, the State has also superimposed a quota on the licensing system so that club licenses are not freely available in localities once the quotas are filled.

These unique features make Pennsylvania's alcoholic beverage control system substantially different from licensing procedures and practices involved in the issuing of a building permit or a driver's license. These, as well as most other governmental licensing activities, apply to the general public, not just to a privileged segment of it, and have been imposed solely for the protection of the general public, not for the benefit of a private organization. Appellant seems to have missed this distinction in its attempt

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regulatory and enforcement system, it also has reserved to itself all aspects of the sale of liquor to the public through a network of State Stores. It has left little to private enterprise and decision.

### Argument

to cover all regulatory activity under a single principle that excludes the presence of state action. In delineating this distinction, the court below was clearly correct.

*Second:* In taking out of context a statement by the court below whereby that court attempted to draw an even finer line between what is forbidden and what is not, appellant has certainly distorted what was said and meant. The court said: "Nothing in what we here say implies a judgment on private clubs which limit participation to those of a shared religious affiliation or a mutual heritage in national origin." From this appellant argues the court was sanctioning religious discrimination in a context where it was striking down racial discrimination.

Nothing could be less accurate. The court's statement is a brief conclusion to an issue discussed extensively both in briefs and at oral arguments below, and at no time was it ever even remotely discussed in the context of permitting invidious discrimination by private clubs on religious grounds.

The issue was whether it was constitutionally permissible for a private club, whose good faith *raison d'être* necessarily involved exclusion of certain religious or ethnic groups, to receive and enjoy a liquor license from the State. Thus, club A, formed for the purpose of promoting and enhancing knowledge and pride in Catholic religious traditions and practices, could validly limit participation to Catholics—not just white Catholics or Italian Catholics, but Catholics in general. Thus, club B, formed for the purpose of promoting and enhancing knowledge and pride in Italian traditions and history among Americans of Italian origin, could validly limit participation to

such persons—not just white Americans of Italian origin or Catholic Americans of Italian origin, but Americans of Italian origin in general.

This distinction is rooted in what might be termed a reasonable relationship test. If the practiced discrimination is reasonably related to the otherwise valid purposes of the organization, the discrimination itself is valid. Contrast the examples given with appellant's case. Its purposes are set forth in Appendix G (first page of the Constitution) to appellant's Jurisdictional Statement:

"The objects and purposes of said fraternal and charitable lodges, chapters, and other units are to unite in the bonds of fraternity, benevolence, and charity all acceptable white persons of good character; to educate and improve their members and the families of their members, socially, morally and intellectually; . . . to encourage tolerance of every kind . . .," etc.

Irvis has asked from the outset, and continues to ask, what conceivably valid purpose is served by excluding non-whites from an organization devoted to fraternal, benevolent and charitable activities in a spirit of tolerance of every kind. No answer has been forthcoming, as indeed there is none; and all the court below has done is to contrast appellant's case with those different and valid ones.

*Third:* Appellant apparently wishes to cover itself with the "private club" exemption contained in section 201(e) of the Civil Rights Act of 1964 although at no time in the history of this case has Irvis relied on this statute or has the issue itself been raised.



### Argument

There is no such question involved here. The 1964 Act forbids places of public accommodation from discriminating. Private clubs are not places of public accommodation. Appellant is a private club. Hence, it may discriminate. Irvis has never urged otherwise; unlike Congress, which said places of public accommodation must *not* discriminate, Irvis has said only that private clubs in Pennsylvania cannot be aided in their discrimination by the State.

Irvis knows of no case, nor has he ever heard it implied, that Congress, in enacting section 201(e), thereby abrogated a long history of constitutional doctrine forbidding the states (or federal government) from aiding and abetting private invidious racial discrimination. Indeed, it would be a novel position to argue that Congress may legislatively terminate constitutionally required Equal Protection principles.

The Civil Rights Act of 1964 and section 201(e) of that Act, in fact, did nothing in this respect. It left the private club and the state action doctrine exactly where they always were prior to its passage. Private clubs may continue, as always, to discriminate; the state may not be involved directly or indirectly. This case involves no more or less than that; and the 1964 Act is irrelevant.

*Fourth:* At no time did Irvis point to the particular regulatory provision of the Liquor Control Board (Regulation 113.09, Appendix F, page 148) requiring adherence by a private club to its Constitution and by-laws as a major indication of State involvement here; and he agrees with appellant that the primary purpose of this particular provision is to insure that private clubs are in fact private.

### Argument

However, the court below did not arrive at its conclusion in this case by relying on this single regulation; and even the most critical reading of its opinion will confirm that its decision would have been the same even were this regulation not present.

Appellant weaves a further argument from this issue and argues that the appropriate remedy would have been to enjoin the Liquor Control Board from enforcing this particular regulation. This argument, unfortunately for appellant, depends upon the regulation's being exactly what it is not—the sole basis for finding state action in the discrimination practiced here. Were the regulation invalidated, all else would remain the same: the appellant would continue to exclude non-whites; and the State would continue to be deeply involved in the discrimination through its licensing, regulatory and monopoly system. Obviously, the same decree would and should issue.

*Fifth:* Irvis has not sought to limit the right of association of anyone. If individuals, as individuals or in groups, wish to exclude him from their private associations because he is a Negro, he recognizes their right to do so. But a constitutionally protected right of association does not extend its scope to the obtaining of alcoholic beverages within the confines of a racially discriminating private club.

Certainly, Pennsylvania, had it so wished, could have chosen not to permit the purchase and sale of alcoholic beverages within private clubs at all. The consequences for appellant would have been no different. Just as barren a barracks it might be; but the right of association, were

*Argument*

it indeed a valued one to appellant's members, would remain as intact as it remains here in fact. It would be only the voluntary decision of these members that they value the right less than they do the obtaining of a drink that would create any problems for appellant; and Irvis suspects that appellant has "let the cat out of the bag," so to speak, when it admits that the sale of liquor is the economic foundation on which appellant's existence rests (Jurisdictional Statement, page 18). How more involved can Pennsylvania be in appellant's discrimination under these circumstances; how less important can any right of association thus be.

---

CONCLUSION

---

The decision of the court below was clearly correct, and appellant has presented no substantial question for the decision of this Court. The judgment and decree of the District Court should be affirmed.

Respectfully submitted,

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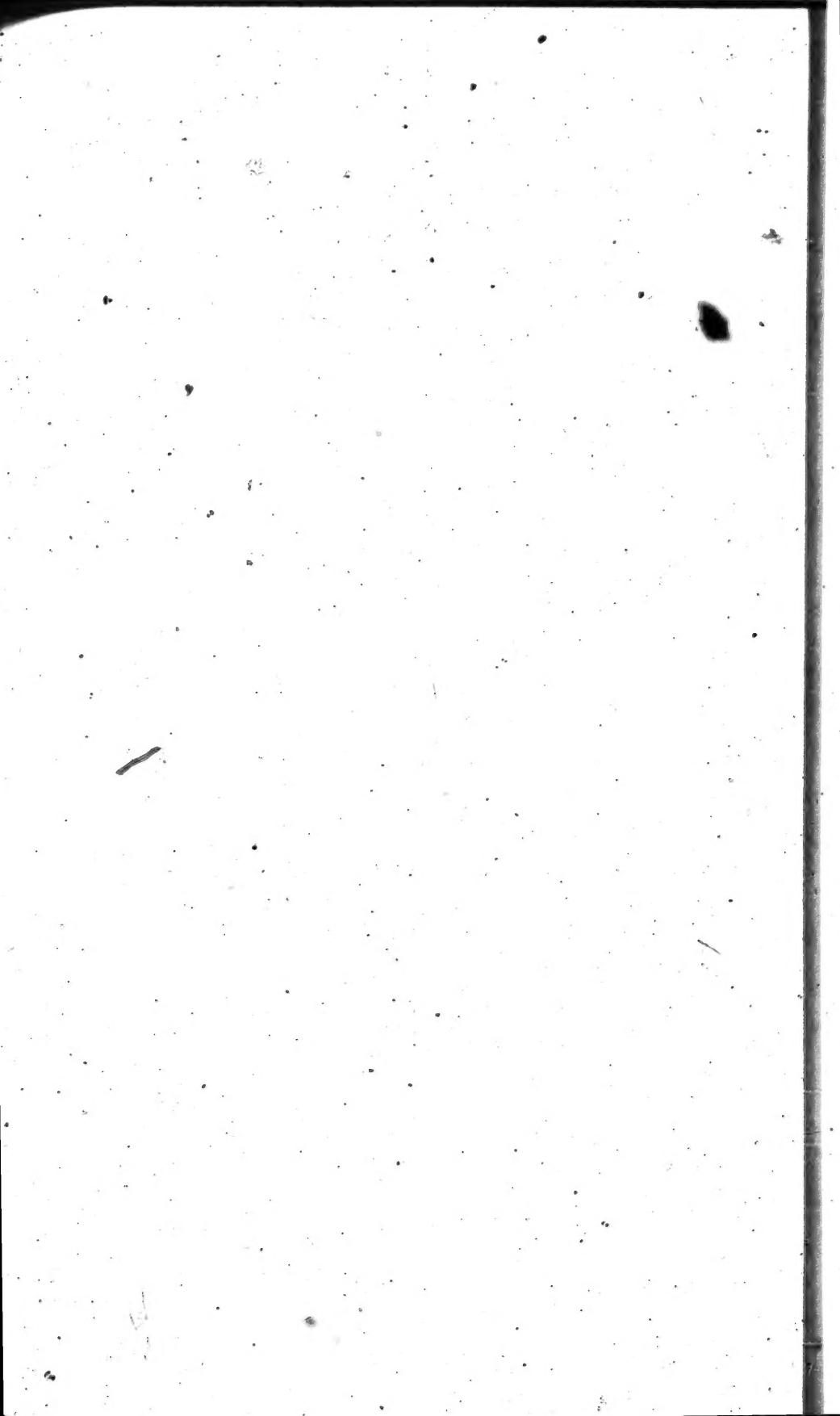
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February, 1971



OCTOBER TERM, 1970

NO. 1202-70-75

MOOSE LODGE NO. 107, Appellant,

K. LEROY IRVIE, and WILLIAM E. SCOTT, Chairmen,  
EDWIN WINNER, Member, and GEORGE R. BORTZ,  
Member, LIQUOR CONTROL BOARD, COMMONWEALTH  
OF PENNSYLVANIA

Appeal from the United States District Court for the  
Middle District of Pennsylvania

MEMORANDUM IN OPPOSITION TO  
THE MOTION TO AFFIRM

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IN THE  
**Supreme Court of**

OCTOBER TERM

No. 129

MOOSE LODGE No. 1

v.

K. LEROY IRVIS, and WILLIAM  
EDWIN WINNER, Members  
Member, LIQUOR CONTROL  
OF PENNSYLVANIA

Appeal from the United States  
Middle District of

**MEMORANDUM IN  
THE MOTION TO**

Pursuant to Rule 16(4), ap  
107 files this memorandum in c  
Irvis's Motion to Affirm.

*First.* Of course we did  
Irvis to criticize the decision  
less to file here a confession of

E  
the United States  
L, 1970

2  
7, Appellant,

M. Z. SCOTT, Chairman,  
and GEORGE R. BORTZ,  
BOARD, COMMONWEALTH

District Court for the  
Pennsylvania

PROPOSITION TO  
D AFFIRM

Appellant MOOSE LODGE No.  
opposition to the appellee

not expect the appellee  
below in his favor, much  
error. But his motion to

affirm, a pleading appropriate only when the issues between the parties are purely factual or when the legal questions presented are palpably insubstantial, wholly misapprehends the nature of this Court's jurisdiction of cases on appeal.

*Second.* The court below candidly admitted in its opinion (J.S. App. A4) that "This case presents a situation which is one of first impression." And the court below in effect repeated that earlier acknowledgment of judicial novelty by granting the appellant Moose Lodge's motion for a stay pending appeal only a very few days after that motion was filed, and before the appellee Irvis's expression of no objection had been received. Thus, without in any sense either rearguing or even summarizing what is already set forth in our Jurisdictional Statement, it is perfectly obvious that what was decided below did not involve merely replotting fields that were already well marked by earlier decisions of this Court.

There is in consequence no need, certainly at this juncture, to distinguish with precision the authorities now put forward by the appellee Irvis (M/A 4, 5); it is quite sufficient to point out that the court below did not purport to be traveling a well-marked furrow, but, to the contrary, acknowledged that it was cutting a new path.

*Third.* The present case, while accordingly one of first impression, is only one of many that are currently in the courts. Considerable other litigation similarly involves the question whether a State's issuance of liquor licenses to private clubs turns those clubs' by-laws into "state action," so that their restrictive membership requirements automatically become subject to the Fourteenth Amendment, and the further question

whether such "state action" outweighs the members' countervailing constitutionally protected liberties of privacy and private association.

1. *Gerber v. Hood*, Civil No. 7701, W.D. Wash., N. Div., is now before a three-judge district court, seeking to enjoin the Washington State Liquor Control Board from issuing liquor licenses to any club engaging in discriminatory acts on the basis of race, religion and national origin, and to require the Board to revoke any licenses already issued to such organizations. The Loyal Order of Moose, the Fraternal Order of Eagles, the Benevolent and Protective Order of Elks, and the Washington State Federation of Fraternal, Patriotic and City Country Clubs, have all been permitted to intervene.

2. *Pitts v. Wisconsin*, E.D. Wis., No. 69-C-260, seeks to revoke all tax exemptions issued to similar fraternal and benevolent organizations, naming the Eagles and the Elks. If the plaintiff were to succeed, all Moose Lodges would be affected.

3. *Revere Lodge No. 1117, B.P.O. Elks v. Miller*, Superior Court of Massachusetts for Suffolk County, is an action to restrain the Massachusetts Alcoholic Beverages Commission from revoking the plaintiff's liquor license; the Commission had directed all Elks, Moose, and Eagles Lodges to show cause why their liquor licenses should not be revoked because of the membership restrictions in their respective charters. A preliminary injunction was denied after the Commonwealth's Attorney General stipulated that no such licenses would be revoked *pendente lite*.

4. *McGlotten v. Portland Lodge No. 142, B.P.O.E.*, D. Ore., is an action challenging the Elks' tax exemption on the ground of its membership restrictions.

5. The State of Maine in 1969 enacted Section 1301-A of Title 17 of the Revised Statutes, which would deny not only liquor but also food licenses to clubs which have racial restrictions, but which, like the ruling below (J.A. App. A11), would permit such licenses to continue to be issued to "organizations which are oriented to a particular religion or which are ethnic in character." \*

A case challenging that statute, brought by twelve Elks Clubs in the Superior Court of Maine at Portland, resulted in judgment for the plaintiffs; we are advised that it has been appealed.

6. We are likewise advised that the passage of similar ordinances elsewhere (e.g., by the City of Madison, Wisconsin) will shortly result in additional litigation.

*Fourth.* In our view, the issuance of a state liquor license to a *bona fide* private club does not and cannot transform the membership requirements of such a club into state action; and the court below, by acknowledging its decision to be one of first impression, concedes that its result does not flow from any ruling ever announced here:

In our view, further, the right of individuals to fashion their private lives by picking their associates so as to express their own preferences and dislikes, and

---

\* The operative part of Ch. 371 of 1969 reads as follows:

"No person, firm or corporation holding a license under the State of Maine or any of its subdivisions for the dispensing of food, liquor or for any service or being a State of Maine corporation or a corporation authorized to do business in the State shall withhold membership, its facilities or services to any person on account of race, religion or national origin, except such organizations which are oriented to a particular religion or which are ethnic in character."



by joining such clubs and groups as they choose, are themselves constitutionally protected liberties under earlier expressions here—which the court below did not even deign to cite.

It follows that the questions now presented are substantial, and that they require plenary consideration with briefs and oral argument before they can be resolved.

### CONCLUSION

For the following additional reasons, it is respectfully submitted that the Court should note probable jurisdiction in the present case.

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MARCH 1971.



FILE COPY

Supreme Court

FILED

JUN 23 1970

E. ROBERT SEEVER

IN THE

**Supreme Court of the United States**

OCTOBER TERM, 1970

~~No. 1292~~ 70-75

MOOSE LODGE No. 107, *Appellant*,

v.

K. LEROY IRVIS, *et als.*

On Appeal from the United States District Court for the  
Middle District of Pennsylvania

**BRIEF FOR APPELLANT MOOSE LODGE NO. 107**

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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1970

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No. 1292

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MOOSE LODGE No. 107, *Appellant*,

v.

K. LEROY IRVIS, *et als.*

---

On Appeal from the United States District Court for the  
Middle District of Pennsylvania

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**BRIEF FOR APPELLANT MOOSE LODGE NO. 107**

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**OPINION BELOW**

The opinion of the court below (A. 30-40) is reported at 318 F. Supp. 1246.

**JURISDICTION**

The final decree of the three-judge district court (A. 41-42) was entered on November 13, 1970. A motion to modify that decree, filed on December 3, 1970 (A. 2, 43-44), was denied on January 5, 1971 (R. 48). The notice of appeal was filed in the district court on January 4, 1971 (A. 2), and the appeal was docketed in this Court on February 2, 1971.

The jurisdiction of this Court to review on direct appeal the judgment of the three-judge court is, in our view, conferred by 28 U.S.C. § 1253 (*infra*, p. 4). On March 29, 1971, this Court postponed further consideration of the question of jurisdiction to the hearing of the case on the merits. The jurisdictional issues are discussed in Points I and II of our Argument, pp. 33-44, *infra*.

### QUESTIONS PRESENTED

1. Whether the complaint herein, which alleged that the Pennsylvania Liquor Code as applied by that Commonwealth's Liquor Control Board violated the Fourteenth Amendment, and which sought an injunction against any further unconstitutional application of the statute and against any further unconstitutional action on the part of said Board, stated a cause of action within the jurisdiction of a three-judge court under 28 U.S.C. § 2281, and hence within the jurisdiction of this Court to review on direct appeal under 28 U.S.C. § 1253.

2. Whether the present cause still involves any case or controversy, inasmuch as the relief obtained does not redress plaintiff's alleged deprivation of civil rights but is essentially punitive in nature, particularly where the plaintiff himself specifically rejected a form of relief that would have afforded redress for the asserted deprivation of civil rights set out in his complaint, and has since represented to this Court that all he seeks is revocation of the Moose Lodge's liquor license.

3. Whether the issuance of a liquor license to a private club so far constitutes state action as to render enforcement by that club of its restrictive membership provisions a violation of the Equal Protection Clause.



4. Whether, as held by the court below, a private club is free to impose religiously or ethnically restrictive membership provisions notwithstanding its possession of a state liquor license, although prohibited by the Equal Protection Clause from imposing racially restrictive membership provisions under identical circumstances.

5. Whether, assuming solely for purposes of argument that possession of a state liquor license by a private club constitutes state action subject to constitutional restrictions, the proper remedy for giving effect both to the visiting individual's right to equal protection of the laws as well as to the members' rights to privacy and private association would have been an injunction against the state requiring the private club to enforce its own restrictive membership regulations, rather than what the court below actually decreed, namely, the termination of the private club's state liquor license until it altered its membership qualifications.

6. Whether the statutory exemption for private clubs in § 201(e) of the Civil Rights Act of 1964 so far gives effect to the constitutionally protected liberties of privacy and private association that this Congressionally directed exemption should be respected as marking the constitutional boundaries of an area wholly free from governmental supervision or interference.

## CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED

### I. Constitution of the United States

The pertinent portions of the Fourteenth Amendment provide as follows:

**"SECTION 1.** All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

\* \* \* \* \*

**"SECTION 5.** The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

### II. Federal Statutes

A. Section 1253 of Title 28, United States, provides as follows:

**"§ 1253. Direct appeals from decisions of three-judge courts**

**"Except as otherwise provided by law, any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges."**

B. Sections 2281 and 2282 of Title 28, United States Code, provide as follows:

**"§ 2281. Injunction against enforcement of State statute; three-judge court required**

"An interlocutory or permanent injunction restraining the enforcement, operation or execution of any State statute by restraining the action of any officer of such State in the enforcement or execution of such statute or of an order made by an administrative board or commission acting under State statutes, shall not be granted by any district court or judge thereof upon the ground of the unconstitutionality of such statute unless the application therefore is heard and determined by a district court of three judges under section 2284 of this title.

**"§ 2282. Injunction against enforcement of Federal statute; three-judge court required**

"An interlocutory or permanent injunction restraining the enforcement, operation or execution of any Act of Congress for repugnance to the Constitution of the United States shall not be granted by any district court or judge thereof unless the application therefor is heard and determined by a district court of three judges under section 2284 of this title."

C. Section 1983 of Title 42, United States Code (R. S. § 1979) provides as follows:

**"§ 1983. Civil action for deprivation of rights**

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities

secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

D. Section 201(e) of the Civil Rights Act of 1964 (42 U.S.C. § 2000a(e)) provides as follows:

**"TITLE II—INJUNCTIVE RELIEF  
AGAINST DISCRIMINATION IN PLACES  
OF PUBLIC ACCOMMODATION**

**"SEC. 201. \* \* \***

**"(e) The provisions of this title shall not apply to a private club or other establishment not in fact open to the public, except to the extent that the facilities of such establishment are made available to the customers or patrons of an establishment within the scope of subsection (b)."**

**III. State Statutes**

A. The Pennsylvania Liquor Code, as amended through 1969 (47 Purdon's Pa. Stat. Ann. §§ 1-101 *et seq.*), is set out at pp. 1-102 of Appendix F to the Jurisdictional Statement.

B. The cognate Quota Law (Act 358 of June 24, 1939, P.L. 806) is set out at pp. 103-104 of Appendix F to the Jurisdictional Statement.

**IV. State Regulations**

The Regulations of the Pennsylvania Liquor Control Board, which were stipulated into the record (A. 26), are set out at pp. 105-244.14 of Appendix F to the Jurisdictional Statement.

**STATEMENT.**

This was an action under 42 U.S.C. § 1983 (*supra*, p. 5) for the redress of civil rights, seeking injunctive and declaratory relief on the ground that Pennsylvania's statutory scheme for the regulation of the liquor traffic, under which a liquor license was issued to a private club, appellant Moose Lodge No. 107, which maintained restrictive membership provisions, denied the appellee Irvis the equal protection of the laws when he was refused service because of his race.

The court below, arguing that possession of the liquor license transformed into state action the membership requirements of the private club, held that license invalid because it violated the Equal Protection Clause, although the court below then went on to hold that religiously or ethnically restrictive membership provisions would have involved no similar unconstitutional deprivation.

The court below accordingly held the liquor license in question invalid and directed its termination, as long as the Moose Lodge "follows a policy of racial discrimination in its membership or operating policies or practices." A motion by the Moose Lodge to modify that decree so that the appellee Irvis would be entitled to guest service, was opposed by him, and denied by the district court.

Consequently, as the case now stands, Irvis, who did not ask for damages, who has never sought membership in the Moose Lodge, and who specifically rejected a modification of the decree that would have precluded repetition of the incident which triggered the present litigation, has obtained a decree under which he can obtain no personal redress whatever.



### A. Background of the Controversy

The facts in this case were stipulated (A. 20-26, 28-29). Accordingly, we adopt the recital appearing in the opinion below (A. 30-33), supplementing it where necessary:

"Defendant Moose Lodge No. 107 is a non-profit corporation organized under the laws of Pennsylvania. It is a subordinate lodge chartered by the Supreme Lodge of the World, Loyal Order of Moose, a non-profit corporation organized under the laws of Indiana, which we permitted to intervene and argue as *amicus curiae*. The local Lodge conducts all its activities in Harrisburg in a building which it owns. It has never been the recipient of public funds. It is the holder of a club liquor license issued by the defendant Liquor Control Board of the Commonwealth of Pennsylvania, pursuant to the provisions of the Pennsylvania Liquor Code, Act of April 12, 1951, P.L. 90, as amended."

"Under its charter from the Supreme Lodge the local Lodge is bound by the constitution and general by-laws of the Supreme Lodge." The Constitution of

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"147 Purdon's Pa. Stat. Annot. §§.1-101 et seq."

[All footnotes are in the original unless otherwise indicated by square brackets; the Pennsylvania Liquor Code appears at pp. 1-102 of Appendix F to the Jurisdictional Statement, hereinafter simply "J.S."]

"2 The objects and purposes of the local Lodge are set forth in the Constitution of the Supreme Lodge as follows:

"The objects and purposes of said fraternal and charitable lodges, chapters, and other units are to unite in the bonds of fraternity; benevolence, and charity all acceptable white persons of good character; to educate and improve their members and the families of their members, socially, morally, and intellectually; to

the Supreme Lodge provides: "The membership of the lodges shall be composed of male persons of the Caucasian or White race above the age of twenty-one years, and not married to someone other than the Caucasian or White race, who are of good moral character, physically and mentally normal, who shall profess a belief in a Supreme Being. . . ." The lodges accordingly maintain a policy and practice of restricting membership to the Caucasian race and permitting members to bring only Caucasian guests on lodge premises, particularly to the dining room and bar.<sup>4</sup>

assist their members and their families in time of need; to aid and assist the aged members of the said lodges, and their wives; to encourage and educate their members in patriotism and obedience to the laws of the country in which such lodges or other units exist, and to encourage tolerance of every kind; to render particular service to orphaned or dependent children by the operation of one or more vocational, educational institutions of the type and character of the institution called "Mooseheart," and located at Mooseheart, in the State of Illinois; to serve aged members and their wives in a special and unusual way at one or more institutions of the character and type of the place called "Moosehaven," located at Orange Park, in the State of Florida; to create and maintain foundations, endowment funds, or trust funds, for the purpose of aiding and assisting in carrying on the charitable and philanthropic enterprises heretofore mentioned; provided, however, that the corporation may act as trustee in the administration of such trust funds, with authority to use the interest therefrom and, in cases of emergency, the principal as well, for the perpetuation of Mooseheart and Moosehaven or either of them."

[The Constitution of the Supreme Lodge of the World, Loyal Order of Moose, as amended in 1967 and in force at the time of the incident in question, appears as Appendix G to the J.S.]

"<sup>3</sup> Section 71-1."

"<sup>4</sup> Section 92.2 of the Constitution of the Supreme Lodge permits members to invite non-members, apparently without limitation, to social clubs maintained by a lodge. Under § 92.6 only a member may make any purchase."

Footnote 4 of the opinion, set forth immediately above, indicates that the court below erred in its reading of the Moose Constitution; the applicable provisions at the time of the incident in question were Sections 92.1 and 92.2 (Appendix G to J. S., pp. 72-73), as follows:

**"§ 91.1. To Prevent Admission of Non Members—**There shall never at any time be admitted to any social club or home maintained or operated by any lodge, any person who is not a member of some lodge in good standing, and it is hereby expressly made the duty of each member of the Order when so requested to submit for inspection his receipt for dues to any member of any House Committee or its authorized employee.

**"§ 92.2. To Prevent Admission—Exceptions—**Only members shall be permitted in any social club or home operated or maintained by any lodge, except upon the invitation of the House Committee or upon the invitation of a member in good standing with the consent of the House Committee, and in the event any such person be admitted upon such invitation to any such social club or home, the member or members so inviting such person or persons shall be responsible for their conduct in such social club or home, and shall be responsible for any property damaged or carried away by any such visitor." \*

\* [Although it is no part of the present record, we set forth here for the sake of completeness the later (1969) version of the foregoing provisions:

**["Sec. 92.1—To Prevent Admission of Non Members—**There shall never at any time be admitted to any social club or home maintained or operated by any lodge, any person who is not a member of some lodge in good standing. The House Committee may grant guest privileges to persons who are eligible for membership in the fraternity consistent with governmental laws and regulations. A member shall accompany

We continue now with the recital from the opinion below (A. 32-33):

"On Sunday, December 29, 1968, a Caucasian member in good standing brought plaintiff, a Negro, to the Lodge's dining room and bar as his guest and requested service of food and beverages. The Lodge through its employees refused service to plaintiff solely because he is a Negro.

"Plaintiff complained of the refusal of service to the Pennsylvania Human Relations Commission, which upheld his complaint. The Commission held that the dining room was a 'place of public accommodation,' within the definition of the Pennsylvania Human Relations Act of February 28, 1961, P.L. 47,<sup>5</sup> and that the local Lodge had been guilty of discrimination against defendant. On appeal by the local Lodge the Court of Common Pleas of Dauphin County reversed the Commission and held that the dining room was not a place of public accommodation within the meaning of the Act.<sup>6</sup>

"In the meanwhile plaintiff brought this action in the District Court for the Middle District of Penn-

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such guest and shall be responsible for the actions of said guest, and upon the member leaving, the guest must also leave. It is the duty of each member of the Order when so requested to submit for inspection his receipt for dues to any member of any House Committee or its authorized employee."]

"<sup>5</sup>43 Purdon's Pa. Stat. Annot. §§ 951 et. seq."

"<sup>6</sup>Pennsylvania Human Relations Commission v. The Loyal Order of Moose, Lodge No. 107, — Pa. D. & C. 2d — (C.P. Dauphin County, March 6, 1970)."

[Actually, this decision is reported in the Dauphin County Reports at 92 Dauph. 234. It was appealed to the Pennsylvania Superior Court, where it was argued on March 8, 1971, and is now awaiting decision.]

sylvania, and this three-judge court was constituted under 28 U.S.C. § 2281 to determine whether the issuance or renewal by the Pennsylvania Liquor Control Board under the Pennsylvania Liquor Code of a club liquor license to the local Lodge despite its discrimination against Negroes violates the Equal Protection Clause of the Fourteenth Amendment."

**B. Status of Moose Lodge No. 107 as a Private Club**

The following stipulated facts supplement the district court's recital regarding the status of Moose Lodge as a private club or otherwise.

"Membership in the Defendant Lodge"—which is a non-profit corporation organized under the laws of Pennsylvania (Supp. Stip., ¶ 2, A. 28)—"is not a right available to the general public. Membership is attained only on the basis of invitation. The invited applicant is required to sign an application, and a health statement, subjecting himself to investigation. Before his admission, his application is submitted to the Lodge at a duly called regular meeting, wherein his application is read, the report of the investigating committee is stated, and he is voted upon by the members assembled. Three (3) negative votes can bar any applicant from membership. The voting is secret. Thereafter, he is required to take an obligation, submit to an enrollment ceremony and take a final and binding obligation, all of which are conditions precedent to his being admitted to membership." (Stip., ¶ 3; A. 23.)

Details elaborating the foregoing appear in Chapter 71 of the General Laws of the Loyal Order of Moose, entitled "Lodge Membership," and set forth at pp. 59-61 of Appendix G to the J.S.



The members of each Moose Lodge elect its principal officers (Chapter 53 at *id.*, pp. 39-42), while the Governor of each lodge appoints three subordinate officers (§ 54.3, p. 43).

The Supreme Lodge consists of three coordinate departments, Legislative, Executive and Judicial (Art. VIII, p. 6; Titles I-III, pp. 12-36).

The Governor and Secretary of each member lodge are *ex officio* its representatives to the Supreme Lodge (§ 53.11, p. 42), which constitutes the body that elects the principal Supreme Officers (Art. II, p. 4; 13.2, p. 15). Other Supreme Officers are appointed either by the Supreme Governor or by the Supreme Council (§ 14.1, p. 16). The vote allocated to each member lodge's representative to the Supreme Lodge varies with the size of the member lodge in question (Art. III, pp. 4-5).

Turning again to Moose Lodge No. 107, appellant here, the parties have stipulated that it "is, in all respects, private in nature and does not appear to have any public characteristics. The social activities enjoyed by the members may be considered similar in kind to social activities enjoyed by the members in their homes \* \* \*. Only members are permitted in any social club or home operated or maintained by any Lodge, except upon the invitation of the House Committee or upon the invitation of a member in good standing with the consent of the House Committee. No person, whether a visitor or otherwise, not a member in good standing is permitted to purchase anything whatsoever in any social club or home maintained or operated by any Lodge." (Stip., ¶ 4(a), A. 23-24.) Moreover, "Guests are not permitted to attend meet-

ings of a Lodge and are permitted to attend social functions only by invitation" (Moose Ans., First Aff. Def., ¶ 5, A. 19; admitted by Stip., ¶ B3, A. 25).

Further non-public aspects are set out in ¶ 5 of the stipulation (A. 24-25): "Defendant Moose Lodge conducts all of its activities in and from a building which is owned by it. It has never been the recipient of any public funds. None of its activities, including but not limited to, the acquisition of the building site, the construction of its building or any phase of its operation, was or is financed by public funds or obligations. Defendant Moose Lodge does not conduct any function or activity in conjunction with any public or community group. It does not hold itself out as conducting any community or public activity."

Appellant's only deviation from privacy involves its catering activities, which are minimal: "The gross revenue realized by Defendant Moose Lodge from such use of its facilities on a catered basis is less than five (5%) per cent of its total operating revenues" (Stip., ¶ 6, A. 25). Such catering activities do not involve the restrictions that are at issue in the present case. As set forth in the stipulation- (*ibid.*), "Under the Pennsylvania Liquor Code (Section 401[(b), p. 21 of Appendix F to J.S.] and Regulation No. 113[.11, *id.* pp. 148-149] of the Pennsylvania Liquor Control Board, a private club licensee may apply for and obtain the privilege of having its facilities used by non-member groups from the public at large on a catered basis. Defendant Moose Lodge has obtained such privilege and from time to time makes its facilities available to such groups on such basis. When it does so, Defendant Moose Lodge imposes no restrictions on

the race or color of persons belonging to the outside group so using its facilities."

### C. Travel of the Litigation

The theory of the complaint (A. 3-9), pursuant to which the three-judge court was convened (A. 9-10), was that the Pennsylvania Liquor Code was unconstitutional as applied, for the reason that it did not prohibit the issuance of liquor licenses to clubs that had racially restrictive membership provisions (§§ 9, 13-14; A. 6, 7); and the relief sought, a declaratory judgment so stating (§§ (a)-(b); A. 7-8), together with suitable injunctive orders (§§ (c)-(e); A. 8-9), was designed to give effect to this theory of the complaint.

Appellant Moose Lodge as well as the individual members of the Pennsylvania Liquor Control Board were named as defendants (Cmplt., §§ 2, 10; A. 3-4, 6), and both sets of defendants first moved to dismiss (A. 11-12), then answered (A. 14-20), and finally, after stipulating to the facts (A. 20-26; see also A. 28-29), severally opposed Irvis' motion for summary judgment (A. 27; A. 1, docket entry for March 11, 1970).

Neither set of defendants raised any jurisdictional question, nor did the three-judge court.

### D. The Holding Below

The court below first considered whether the admitted discrimination on the part of the appellant Lodge "bore the attributes of state action" (A. 33). While admitting that "This case presents a situation which is one of first impression" (*ibid.*), the court concluded that (A. 34)—

"We believe the decisive factor is the uniqueness and the all-pervasiveness of the regulation by the Commonwealth of Pennsylvania of the dispens-

ing of liquor under licenses granted by the state. The regulation inherent in the grant of a state liquor license is so different in nature and extent from the ordinary licenses issued by the state that it is different in quality."

After summarizing the extent of the restrictions imposed by the state in regulating the liquor traffic, and stating (A. 37) that "It would be difficult to find a more pervasive interaction of state authority with personal conduct," the court said (A. 37-38; footnotes omitted):

"In addition to this, the regulations of the Liquor Control Board adopted pursuant to the statute affirmatively require that 'every club licensee shall adhere to all the provisions of its constitution and by-laws.' As applied to the present case this regulation requires the local Lodge to adhere to the constitution of the Supreme Lodge and thus to exclude non-Caucasians from membership in its licensed club. The state therefore has been far from neutral. It has declared that the local Lodge must adhere to the discriminatory provision under penalty of loss of its license. It would be difficult in any event to consider the state neutral in an area which is so permeated with state regulation and control, but any vestige of neutrality disappears when the state's regulation specifically exacts compliance by the licensee with an approved provision for discrimination, especially where the exaction holds the threat of loss of the license."

Accordingly, on the asserted authority of *Burton v. Wilmington Pkg. Auth.*, 365 U.S. 715, 725, and of *Shelley v. Kraemer*, 334 U.S. 1, the court concluded that the state had practiced discrimination (A. 40):

"There is no question here of interference with the right of members of the Moose Lodge to associate among themselves in harmony with their

private predilections. The state, however, may not confer upon them in doing so the authority which it enjoys under its police power to engage in the sale or distribution of intoxicating liquors, under a grant from the state which is conditioned in this case on the club's adherence to the requirement of its constitution and customs that it must practice discrimination and refuse membership or service because of race."

But, while holding racial discrimination to be unconstitutional, the court approved religious and ethnic discrimination by private clubs, saying (A. 40):

"Nothing in what we here say implies a judgment on private clubs which limit participation to those of a shared religious affiliation or a mutual heritage in national origin. Such cases are not the same as the present one where discrimination is practiced solely on racial grounds and therefore collides head-on against the 'clear and central purpose of the Fourteenth Amendment . . . to eliminate all official state sources of invidious racial discrimination in the States.' *Loving v. Virginia*, 388 U.S. 1, 10 (1967); and cases there cited."

Accordingly, the court held (*ibid.*) "that the club license granted by the Liquor Control Board of the Commonwealth of Pennsylvania to the Moose Lodge No. 107 is invalid because it is in violation of the Equal Protection Clause of the Fourteenth Amendment of the Federal Constitution."

#### **E. Final Decree; Appeal**

The decree (A. 41-42) entered on the foregoing opinion (1) declared the liquor license invalid; (2) directed the Pennsylvania Liquor Control Board and its members to terminate the same; and (3) enjoined



the Board and its members "from issuing any club liquor license to defendant Moose Lodge No. 107 as long as it follows a policy of racial discrimination in its membership or operating policies or practices."

Moose Lodge moved to modify the foregoing decree by substituting the words "social club" for the word "membership" (A. 42-44), in part on the ground of conflict with what the court had said in its opinion (A. 40) that "There is no question here of interference with the right of members of the Moose Lodge to associate among themselves in harmony with their private predilections," in part also on the footing that this change would afford the plaintiff Irvis the guest service which, when denied, had resulted in the present litigation.

The parties had stipulated that if Moose Lodge were "denied a right to obtain a liquor license, it would be greatly impeded in that it would sustain a loss of membership and its capability of carrying on its benevolent purposes would be seriously impaired" and also "in that it would sustain a great loss in membership and its capability of contributing to the purposes of the Supreme Lodge would be greatly impaired" (Moose Lodge Ans., Fourth Affi. Def., ¶ 1, A. 19; *id.*, Fifth Affi. Def., ¶ 1, A. 20; both stipulated as true (¶ B3, A. 25)).

The appellee Irvis objected to the proposed modification (R. 44-47), because "if all the Decree were to do was to require the Defendant Moose Lodge to serve alcoholic beverages to Negro guests of members, it seems obvious that the elimination of the State as a participant in a racially discriminatory activity would not be accomplished in any way whatsoever" (A. 45),

and because "the effect of the Decree is to prevent the State from doing something, not to prevent Defendant Moose Lodge from doing anything" (A. 47).

The motion to modify was denied (A. 47).

Moose Lodge No. 107 noted a timely appeal, and simultaneously moved for a stay (A. 2, entries for Jan. 4, 1971). Its motion for a stay pending appeal and until final disposition of the cause by this Court was granted (A. 2, entry for Jan. 8, 1971).

Moose Lodge No. 107 then docketed its appeal here, joining the non-appealing members of the Pennsylvania Liquor Control Board as appellees pursuant to this Court's Rule 10(4).

On March 29, 1971, it was ordered that "In this case probable jurisdiction postponed to the hearing of the case on the merits" (J. Sup. Ct., Oct. T. 1970, p. 426).

Since then, we have been notified by the cognizant Assistant Attorney General of Pennsylvania "that the Commonwealth of Pennsylvania does not desire any further active participation in this litigation." \*

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\* A copy of that communication, dated April 7, 1971, has been lodged with the Clerk. It was stipulated below that the appellee Irvis is "a member of the Pennsylvania House of Representatives and the duly elected leader of the majority party of said House of Representatives" (Cmplt., ¶ 11, A. 6; Stip., ¶ B1, A. 25). Whether the impact of the change of State administration that followed the November 1970 election on the foregoing stipulated fact is responsible for the official appellees' transition from an active to a passive role is of course not for us to say.

## SUMMARY OF ARGUMENT

I. The complaint stated a case for the convening of a three-judge court pursuant to 28 U.S.C. § 2281, because it sought injunctive relief, on substantial assertions of federal unconstitutionality, against the operation of a state-wide regulatory scheme as it was being applied. *Turner v. Fouche*, 396 U.S. 346, 353-354; *Flast v. Cohen*, 392 U.S. 83, 90-91.

The attack need not be directed at the statute as a whole; it is sufficient that the challenge is to the statute as applied. *Fleming v. Rhodes*, 331 U.S. 100; *F.H.A. v. The Darlington, Inc.*, 358 U.S. 84, 87. And it should be noted that 28 U.S.C. § 2281, "Injunction against enforcement of State statute," includes orders made by boards acting under state statutes, and so is broader than 28 U.S.C. § 2282, "Injunction against enforcement of Federal statute."

This case does not involve a single one of the many factors that have been held fatal to the convening of a three-judge court.

Nothing turns on the circumstance that the discrimination here alleged is negative, viz., that the state board refused to withhold licenses from licensees that discriminated; cf. *Rochester Telephone Corp. v. United States*, 307 U.S. 125. Here there were both prayers for, and a decree granting, injunctive relief; the presence of other prayers therefore did not oust the three-judge court of jurisdiction (*Zemel v. Rusk*, 381 U.S. 1, 5-7); nor this Court of the power to entertain a direct appeal, as the instant cause is not one where declaratory relief was granted without more (cf. *Mitchell v. Donovan*, 398 U.S. 427; *Gunn v. University Committee*, 399 U.S. 383).

This is not a case involving the Supremacy Clause, nor one where the constitutionality of the state statute is either conceded or alleged only as an anticipatory defense, nor one involving only a local enactment or local officers. Finally, the federal question is plainly substantial, as evidenced by the circumstances that plaintiff obtained a judgment below but failed in his motion for affirmance here.

Accordingly, looking solely to the complaint—the only permissible test (*Moody v. Flowers*, 387 U.S. 97, 104)—the complaint stated a case that required a three-judge court, and that tribunal's final judgment, which granted injunctive relief against state officers, is therefore reviewable here on direct appeal under 28 U.S.C. § 1253.

II. Nonetheless, a three-judge court validly convened by reason of the allegations of the complaint may lose jurisdiction when it appears that any of the prerequisites for such a court have ceased to exist, e.g., when the application for a preliminary injunction has been abandoned (*Smith v. Wilson*, 273 U.S. 388), or when the constitutionality of the state statute under attack is later conceded (*Ex parte Hobbs*, 280 U.S. 168), or when it later appears that there is no basis for relief of any sort against the state officers concerned (*Oklahoma Gas & E. Co. v. Oklahoma Packing Co.*, 292 U.S. 386).

It is likewise clear that, to present a Case or Controversy, the private individual must show that he has sustained or is about to sustain injury; it is not sufficient that he has merely a general interest common to all members of the public. *Ex parte Levitt*, 302 U.S. 633, and cases cited. "Litigants may challenge the

constitutionality of a statute only in so far as it affects them." *Fleming v. Rhodes*, 331 U.S. 100, 104. They can put forward the rights of others only in so far as they can show some personal injury in consequence. *Barrows v. Jackson*, 346 U.S. 249; *Griswold v. Connecticut*, 381 U.S. 479; *Sullivan v. Little Hunting Park*, 396 U.S. 229.

Here plaintiff set forth an arguable *prima facie* case for relief under 42 U.S.C. § 1983 for having been denied service because of his race when brought into Moosé Lodge No. 107 as a guest. However, he sought no damages; did not sue as a member of a class; far from seeking to join the Moose Lodge, he asserted in a formal pleading that they are free to associate with whom they please; and, when Moose Lodge sought a modification of the decree that would have prevented a repetition of the incident out of which the present litigation arose, plaintiff opposed it.

All he now wants, as his Motion to Affirm in this Court shows, is that the Commonwealth of Pennsylvania "be removed from participation in appellant's pattern of racial discrimination by revoking appellant's club liquor license" (p. 2). Thus the decree entered below punishes Moose Lodge, enforces an abstract theory of licensing as to which plaintiff has no more interest than any other of the nearly 12,000,000 inhabitants of Pennsylvania, affords him no personal redress whatever, and because of his objection contains nothing to preclude a recurrence of the matter set out in the complaint.

In our view, therefore, plaintiff's position has destroyed the jurisdiction of the three-judge court in the sense of negating the existence of a Case or Con-



troverſy; the cauſe accordingly now involves only a "difference or diſpute of a hypothetical or abstract character" (*Ætna Life Ins. Co. v. Haworth*, 300 U.S. 227, 240), inasmuch as plaintiff now ſhows "merely a general interest common to all members of the public" (*Ex parte Levitt*, 302 U.S. 633, 634).

If, however, the merits are reached, reversal is ſtill required; plaintiff has ſtated no claim on which relief can be granted.

III. The right of individuals to choose their ſocial intimates ſo as to expreſs their own preferences and diſlikes, and to faſhion their private lives by forming or joining a club, is an aſpect of the conſtitutional right of privacy and private aſſociation that is protected by the Firſt Amendment againſt governmental intrusion or limitation.

A. The basic conſtitutional right of privacy and private aſſociation extends to membership in a private club. *Evans v. Newton*, 382 U.S. 296, 298-299; *Bell v. Maryland*, 378 U.S. 226, 313: While no other decisions here have diſcuſſed the conſtitutional right of private aſſociation that is reflected in private club membership, a long line of caſes has recognized the exiſtence and indeed the fundamental nature of the conſtitutional rights of privacy and of aſſociation, from *Boyd v. United States*, 116 U.S. 616, 630 (1886), through *NAACP v. Alabama*, 357 U.S. 449, *Griswold v. Connecticut*, 381 U.S. 479, and *United States v. Robel*, 389 U.S. 358. All of the decisions recognize that the conſtitutional right of aſſociation is a broad one, conſtituting a basic freedom. We ſubmit that this right is one that cannot be narrowly limited ſimply to meeting with one's fellows on the ſtreet or withholding membership or membership liſts from ſcrutiny.

B. Moose Lodge No. 107 is a private club by every recognized test, and the parties have so stipulated.

It has a careful screening machinery for membership applicants; it limits the use of its facilities to members and guests (except as to its minimal catering activity, to which its membership restrictions are not applied); it is controlled by its membership; it is a non-profit corporation organized as such; and it does not seek public patronage.

Contrariwise, Moose Lodge No. 107 has none of the indicia that have resulted in rulings that the establishment in question was in fact no club at all: No exclusiveness but open to any white-skinned person; sham because mere change of name; purely commercial operation; solicitation of public patronage.

Accordingly, both the plaintiff and the court below agreed that Moose Lodge No. 107 is a bona fide club by any test and that it is not in fact open to the public.

C. Since the members of Moose Lodge No. 107 have in the exercise of their constitutional right of private association indicated their preferences and dislikes, they cannot be hampered in such exercise merely because some public officials do not share those preferences or entertain different dislikes; the doctrine of unconstitutional conditions forbids.

Unless a club includes facilities for food and drink it would be but a bare hall. The bar is not only a social nexus but as a realistic matter it offsets the restaurant deficit and thus insures the club's continued existence. Plaintiff himself stipulated that denial of a liquor license would greatly impair not only the

Moose Lodge's membership but also its capacity for carrying forward its own benevolent purposes and for contributing to the purposes of the Supreme Lodge.

The fact that bar proceeds are economically vital does not mean that the sale of liquor constitutes Moose Lodge's primary purpose; it could not have received its license on that footing, and the parties have stipulated that its purposes are fraternal and charitable.

If then its liquor license is to be withdrawn, all other state or municipal licenses necessary to the functioning of Moose Lodge No. 107 must also be withdrawn—occupancy permit, health permit, water supply, steam for heat, trash collection services.

In our view, such licenses and services cannot properly be withdrawn or revoked because of the nature of a genuinely private club's membership restrictions. That is because the imposition of those restrictions is itself an exercise of the constitutionally protected liberties of privacy and private association.

IV. Issuance of a liquor license to a private club does not transform that club's acts into state action so as to be subject to the Fourteenth Amendment. That would be too big a jump, one that would cancel every concept and practice of private ownership. Cf. *Bell v. Maryland*, 378 U.S. 226, 333.

A. The activities of a state licensee that has no public aspects whatever do not constitute state action. Moose Lodge owns its own building; does not conduct any function or activity in conjunction with any public or community group; has never been the recipient of any public funds or financial assistance; is in respect of its minimal catering activity open to all without restric-

tion; and has never relied upon or even sought to invoke public assistance in the conduct of its affairs, whether from the police or the courts. Thus there are not present here any of the varying factors that in every other decision underlay the holding of state action.

B. Examination of other types of state licenses emphasizes the basic error committed below, namely, the confusion between the licensing process, which is state action, and what the licensee does, which is not. The circumstance that licenses are necessary for many activities in today's crowded world does not require the licensee to serve or admit all comers without discrimination. E.g., the state cannot prohibit interracial marriages (*Loving v. Virginia*, 388 U.S. 1); but it does not follow that the recipient of a marriage license is therefore constitutionally obliged to accept a spouse of another race.

C. The test of "continuing and pervasive regulation," which was fashioned by the court below to distinguish liquor licenses from all others, is untenable, unsound, and unworkable.

1. "Continuing" regulation is not peculiar to liquor licenses, but applies to other permits equally necessary to a private club's existence, such as the continuous inspection of building, elevators, and restaurants.

2. Nor is "pervasiveness" a sounder distinction, first of all because it provides no test at all—what after all is clearly "pervasive" and what equally clearly is not?—second because it misconceives the applicable law and regulations.

The Pennsylvania Liquor Code imposes fewer restrictions on clubs than on any other dispenser of alcoholic beverages, and virtually all of the restrictions on clubs are designed to insure that commercial establishments do not masquerade as clubs in order to obtain the Pennsylvania law's more generous provisions for hours of sale that are allowed to clubs. Similarly, the Liquor Control Board's Regulation 113 shows on its face that it is designed only to differentiate clubs from places that are not clubs; its terms simply will not support the district court's characterization of "pervasiveness."

A grant of state tax exemption does not involve any establishment of religion (*Walz v. Tax Commission*, 397 U.S. 664); neither do Pennsylvania's provisions for sacramental wine licenses, nor that Commonwealth's licensing of those who solicit money for churches. Yet under the rationale below every one of those instances would involve "state action."

D. In actual fact, the operation of the Pennsylvania liquor control system involves, not the grant of a privilege, as the court below erroneously held, but rather the imposition of restrictions, restrictions that are emphasized by the greater power over liquor that states have by reason of the Twenty-first Amendment.

The restrictive nature of Pennsylvania's scheme is shown by the circumstances that all alcohol must be purchased from state stores; that even the more limited hours-of-sale restrictions applicable to clubs are inoperative in private homes; and that the prohibitions against supplying visibly drunk persons are similarly inoperative there. In short, to conclude that every permissible act of dispensing and consuming liquor must



be characterized as a "privilege" is to let semantics distort reason.

E. The exemptions granted by the court below to private clubs having religious and ethnic membership restrictions rather than racial ones additionally expose the utter fallacy of its controlling rationale. For the distinction between religious and ethnic on the one hand, and racial on the other, a distinction clearly drawn by the court below (A. 40), fails utterly on the "state action" approach that it espoused.

The Fourteenth Amendment is not limited to racial discrimination; it equally forbids religious discrimination. *Schware v. Board of Bar Examiners*, 353 U.S. 232, 238-239; *Torcaso v. Watkins*, 367 U.S. 488. The decision last cited is significant, because if the Moose Lodge's restrictions to Caucasians-only is forbidden state action, then so is its requirement for "belief in a Supreme Being"—and in that event the Knights of Columbus and similar "private clubs which limit participation to those of a shared religious affiliation" (A. 40) must, all of them, lose their liquor licenses also.

Nor does the district court's concept of "a mutual heritage in national origin," a restriction in club membership that it held not to constitute forbidden state action, stand on any sounder footing. For the plain fact of the matter is that any club whose "mutual heritage in national origin" involves any one of a score of European ethnic strains is just as much Caucasians-only in its operation as the Moose Lodge. There are, after all, no non-Caucasian Germans, Swedes, Irish, Scotch, Welsh, French, Italians, Poles etc., etc., etc.

Thus the district court's exceptions establish with unusual eloquence the utter unsoundness of its essential *ratio decidendi*.

F. The least untenable ground taken below was the point that enforcement of Regulation 113.09, requiring that "Every club licensee shall adhere to all of the provisions of its Constitution and By-laws," made the state a participant in the Moose Lodge's racially restrictive membership requirements.

However, when viewed against the background of Pennsylvania's liquor licensing system, under which clubs are under fewer restrictions than other dispensers, it seems plain that, as the appellee Irvis has told this Court (M/A 8), "the primary purpose of this particular regulation is to insure that private clubs are in fact private." Consequently it is not susceptible of the interpretation placed on it below.

But even on the district court's view, the result is still wrong. The regulation can and should be regarded as giving effect to the constitutionally protected rights of privacy and of association that are exemplified by the existence and operation of every private club. Or, as a final "even if" concession, not likely to be reached, a decree could easily be fashioned to enjoin enforcement of Regulation 113.09 but only insofar as it purports to implement discriminatory qualifications for membership, be they racial, ethnic, or religious.

V. We say, "not likely to be reached," because the Congressional exception, in § 201(e) of the Civil Rights Act of 1964, for "a private club or other establishment not in fact open to the public," marks a proper boundary between the competing constitutionally pro-

tected liberties of privacy and of private association on the one hand and of freedom from discriminatory state action on the other.

A. The legislative history of that exception shows, first, that the President asked Congress to enforce the Fourteenth Amendment only in respect of public accommodations.

The first draft of what became the Civil Rights Act of 1964 contained an exception for "a bona fide private club or other establishment not open to the public," and this exception remained through the end, with only one minor modification; in order to make the test of private versus public an objective one, the words "bona fide" were stricken, and "in fact" was inserted after "not," so as to read, "not in fact open to the public."

The legislative history shows that Congress established the private club exemption with minimal debate and universal acceptance; Congress drew a line between competing constitutional rights that is easily susceptible of ascertainment by objective standards; and it drew that line in response to the invitation extended by some members of the Court in *Bell v. Maryland*, 378 U.S. 227, 317.

B. The foregoing guideline should be given the same effect as other Congressional enactments enforcing the Civil War Amendments. E.g., *South Carolina v. Katzenbach*, 383 U.S. 301; *Katzenbach v. Morgan*, 384 U.S. 641; *Gaston County v. United States*, 395 U.S. 285; *Perkins v. Matthews*, 400 U.S. 379.

The power of Congress under the virtually identical enforcement provisions of those Amendments is plenary, quite as full as its power under the Necessary and

Proper Clause; and accordingly the test of their valid exercise is not wisdom or unwisdom, not whether more or less should have been legislated, but simply whether what was enacted was reasonably appropriate. *M'Culloch v. Maryland*, 4 Wheat. 316, 421. Here the end is indeed appropriate, because Congress was drawing a line between competing considerations that actually gives full effect to both. Inasmuch as the Fourteenth Amendment has long since been deemed to incorporate the First, Congress by enacting Section 201(e) has enforced all aspects of the Fourteenth.

The ready acceptance of Section 201(e) by all concerned, the existence of a similar exemption either express or implied in numerous state civil rights statutes, and the identity of inquiry in the administration of both sets of exemptions, federal and state, demonstrate that for this Court now to accord deference to what Congress enacted involves not only respect to a coordinate branch of government, but recognition as well of a virtually unanimous understanding, one that gives effect to all of the competing constitutional contentions involved.

C. The many other provisions of the Civil Rights Act of 1964 that prohibit discrimination on the four stated grounds of "race, color, religion or national origin" emphasize in still another aspect the untenability of the district court's distinction between a private club's membership restrictions that are racial and those that are religious or ethnic.

D. When Congress enacted the provisions directed at "Discrimination in Places of Public Accommodation" in Title II of the Civil Rights Act of 1964, and excepted from those provisions "a private club or

other establishment not in fact open to the public," it was giving effect to the constitutionally protected liberties of privacy and private association that are inherent in the right of every individual to express his likes, his dislikes, his prejudices, and his after-judgments by joining a private club composed of like-minded persons.

It did so because, ultimately, so far as the character of its membership is concerned, every genuinely private organization is to that extent beyond the reach of governmental regulation. Some members of this Court have said as much (*Bell v. Maryland*, 378 U.S. 226, 313; *Gibson v. Florida Legislative Comm.*, 372 U.S. 539, 565, 570, 575-576), and we are not aware of any expressions here to the contrary. We adopt, not because it is "authority," but because the matter was there so well expressed, the recent formulation of the foregoing principle that appears in *Wright v. Cork Club*, 315 F. Supp. 1143, 1156-1157.

### ARGUMENT

As required by Rule 16(6), we address ourselves at the outset to the question of jurisdiction that was postponed when the Court set this case for hearing on the merits.

Briefly, it is our position, first, that the complaint set forth a case requiring a three-judge district court because it sought *inter alia* injunctive relief against the operation of a statewide regulatory system on the ground that the state statute and state officials' orders thereunder were unconstitutional as applied, and because those allegations of unconstitutionality were substantial.



However, it is also our view that there now exists neither Case nor Controversy to support an exercise of the judicial power, because the relief granted does not afford the plaintiff Irvis redress for the injury he had alleged. This circumstance is emphasized by two factors. First, he objected to a modification of the final decree that would indeed have prevented any repetition of the incident that precipitated the present litigation. Second, he has since represented to this Court that he is interested neither in joining the Moose Lodge nor in entering on its premises, and that his only concern is "that the Commonwealth of Pennsylvania be removed from participation in appellant's pattern of racial discrimination by revoking appellant's club liquor license." Thus the case is now one where the court below acted punitively against the Moose Lodge and simply abstractly against the official defendants, without any reference whatever to the plaintiff's asserted injury. It follows that jurisdiction in the Article III sense has been lost.

It now remains to articulate the foregoing conclusions in the order just stated.

**I. THE COMPLAINT STATED A CASE FOR THE CONVENING OF A THREE-JUDGE COURT PURSUANT TO 28 U.S.C. § 2281, BECAUSE IT SOUGHT INJUNCTIVE RELIEF, ON SUBSTANTIAL ASSERTIONS OF FEDERAL UNCONSTITUTIONALITY, AGAINST THE OPERATION OF A STATE-WIDE REGULATORY SCHEME AS IT WAS BEING APPLIED.**

As we have shown (*supra*, p. 15), the complaint herein (A. 3-9) sought *inter alia* injunctive relief against the further operation of the Pennsylvania Liquor Code as applied, on the ground that it authorized and required the members of the Pennsylvania Liquor Control Board to issue liquor licenses to the

appellant Moose Lodge, which admittedly has racial restrictions on its membership.

The theory of the complaint was that insofar as the statute authorized such action it involved the Commonwealth in the discriminatory practices of the Moose Lodge, concededly a *bona fide* private club (Stip., ¶ 3, 4(a); A. 23-24), which in consequence became state action prohibited by the Equal Protection Clause of the Fourteenth Amendment (Cmplt., ¶ 13; A. 7).

Properly looking only to the complaint, which indeed is the touchstone (*Moody v. Flowers*, 387 U.S. 97, 104), both the district judge as well as the chief judge of the circuit concluded that a three-judge court was required (A. 9, 10). We submit that they were right in so concluding, on the basis of numerous consistent decisions of this Court over many years.

The most recent decisions here are *Turner v. Fouche*, 396 U.S. 346, where, as in the present case, the state statute was not unconstitutional on its face, but was unconstitutionally applied, see extensive documentation with full citation of authorities in note 10 at pp. 353-354; and *Flast v. Cohen*, 392 U.S. 83, 90-91, where the attack in the complaint was not on the statute but on its administration, and the jurisdiction of the three-judge court was sustained against a strong argument by the Solicitor General to the contrary (Br. for Appellees, No. 416, Oct. T. 1967, Point I, pp. 9-21).

Other cases to the same effect—three-judge court required where operation of a state-wide regulatory scheme is sought to be restrained—are *King v. Smith*, 392 U.S. 309; *Zemel v. Rusk*, 381 U.S. 1; *United States v. Georgia*, 371 U.S. 285; *Paul v. United States*, 371

U.S. 245; and, from an earlier date, *Prendergast v. New York Telephone Co.*, 262 U.S. 43.

Perhaps it should be recalled that the requirement of a three-judge court to deal with the unconstitutionality of a statute as applied was sustained in *Fleming v. Rhodes*, 331 U.S. 100, against articulated dissent that would have required three judges only to consider attacks on the unconstitutionality of the statute as a whole, 331 U.S. at 108-110; and that thereafter, in *F.H.A. v. The Darlington, Inc.*, 358 U.S. 84, 87, the Court accepted *Fleming v. Rhodes* without further discussion.

It should also be noted in this connection that 28 U.S.C. § 2281, "Injunction against enforcement of State statute," is broader than 28 U.S.C. § 2282, "Injunction against enforcement of Federal statute"; see text of each, *supra*, page 5. That is because the former requires a three-judge court to restrain "an order made by an administrative board or commission acting under State statutes," while there is no such requirement for an injunction against the enforcement of federal officers' orders; this was first pointed out in *Jameson & Co. v. Morgenthau*, 307 U.S. 171. Compare, as to the need for three-judge courts to restrain the operation of state orders, particularly rate orders, *Ex parte Northern Pac. R. Co.*, 280 U.S. 142 (and its sequels at 280 U.S. 530 and 281 U.S. 690); *Eichholz v. Public Service Comm.*, 306 U.S. 268; and *Driscoll v. Edison Light & Power Co.*, 307 U.S. 104.

It remains now to consider other possible objections to the jurisdiction of a three-judge court; all of them are severally inapplicable here.

1. In most of the cases cited, the complaint alleged that a statute fair on its face was being unconstitu-

tionally applied by reason of affirmative discrimination. E.g., *Turner v. Fouche*, 396 U.S. 346. Here, however, the discrimination alleged is negative in nature, viz., the state board refuses to withhold licenses from any licensee that discriminated (Cmplt., ¶ 9; A. 6). But we think that the old distinction between "negative" and "affirmative" orders, which was finally laid to rest in *Rochester Telephone Corp. v. United States*, 307 U.S. 125, decided in 1939, should not now be exhumed and resurrected in another context.

2. It is of course well settled that a prayer for declaratory relief alone does not sustain a three-judge court. *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 152-155. Here, however, prayers (c), (d), and (e) requested injunctive relief (A. 8-9), and it is equally well settled that to join with a prayer that requires a three-judge court other prayers that do not—here the request for declaratory judgments (prayers (a) and (b); A. 7-8)—will not oust the three-judge court of jurisdiction. *Zemel v. Rusk*, 381 U.S. 1, 5-7, and cases there cited.

3. It is similarly settled that neither the granting nor the refusal of a declaratory judgment without more will support a direct appeal to this Court under 28 U.S.C. § 1253 (*supra*, p. 4). *Mitchell v. Donovan*, 398 U.S. 427; *Gunn v. University Committee*, 399 U.S. 383. But here injunctive relief was in fact granted by paragraphs 2 and 3 of the final decree (A. 41-42), so that the direct appeal in the present case is specifically authorized by the explicit language of § 1253.

4. This is not a case involving the Supremacy Clause and the doctrine of preemption, which no longer requires—which indeed no longer permits—a district

court of three judges. *Swift & Co. v. Wickham*, 382 U.S. 111, overruling *Kesler v. Department of Public Safety*, 369 U.S. 153.

5. Nor is this a case where the constitutionality of the state statute is conceded, *Ex parte Hobbs*, 280 U.S. 168, 171-172, or one where the unconstitutionality of a statute is alleged only as an anticipated defense, *International Union v. Donnelly Garment Co.*, 304 U.S. 243, 251-252.

6. Moreover, since this is a case brought against state officers that attacks the application of a state-wide regulatory system, it is not subject to the stricture of involving only a local enactment or local rather than state officers. It is only the latter situation that is not within the purview of the three-judge court provision. E.g., *Moody v. Flowers*, 387 U.S. 97; *Griffin v. School Board*, 377 U.S. 218, 227-228; *Rorick v. Everglades Drainage District*, 307 U.S. 208; *Ex parte Collins*, 277 U.S. 565.

7. Finally, this case does not suffer from the infirmity of presenting an insubstantial federal question, which, assuredly, does not call for three judges. *Swift & Co. v. Wickham*, 382 U.S. 111, 115, and cases there cited; *Bailey v. Patterson*, 369 U.S. 31; *Turner v. Memphis*, 369 U.S. 350.

Here the substantiality of the question presented, howsoever viewed, is attested by the circumstances that the plaintiff obtained a judgment below but that his motion to affirm that judgment here without argument did not prevail.

It follows that the complaint—to which alone we may look under the present heading, *Moody v. Flowers*,



387 U.S. 97, 104—the complaint stated a case that required a three-judge court; such a court was therefore properly convened (A. 9, 10); and its final judgment, which granted injunctive relief against state officers (§§ 2 and 3; A. 41-42), was accordingly reviewable here by direct appeal pursuant to 28 U.S.C. § 1253 (*supra*, p. 4).

**II. ALTHOUGH THE COMPLAINT SET OUT A CASE WITHIN THE JURISDICTION OF A THREE-JUDGE COURT, THERE NOW REMAINS NO CASE OR CONTROVERSY ON WHICH THE JUDICIAL POWER CAN OPERATE, INASMUCH AS THE DECREE BELOW GRANTED THE APPELLEE IRVIS NO PERSONAL REDRESS, BUT IS PUNITIVE, ABSTRACT, AND ESSENTIALLY LEGISLATIVE IN ITS OPERATION, A CIRCUMSTANCE EMPHASIZED BY HIS REPRESENTATIONS TO THIS COURT AND BY HIS OPPOSITION TO A MODIFICATION OF THE DECREE THAT WOULD HAVE PREVENTED ANY REPETITION OF THE INCIDENT OUT OF WHICH THE PRESENT LITIGATION AROSE.**

Two well-established and unquestioned principles underlie our argument under the foregoing heading.

*First.* It is clear from numerous decisions of this Court that a three-judge court validly convened by reason of the allegations of the complaint (including the substantiality of the constitutional issue asserted) may lose jurisdiction when it appears that any of the prerequisites for such a court are lacking or have ceased to exist, with the result that further proceedings must be conducted before only a single judge and with the further result that no direct appeal lies to this Court.

Thus, a court of three judges is not required on the final hearing when the application for a preliminary injunction has been abandoned (*Smith v. Wilson*, 273 U.S. 388), or when the constitutionality of the state statute originally assailed is later conceded (*Ex*

*parte Hobbs*, 280 U.S. 168), or when, although the allegations of the complaint are sufficient, it subsequently becomes apparent that there is no basis for relief of any sort against the state officers concerned (*Oklahoma Gas & E. Co. v. Oklahoma Packing Co.*, 292 U.S. 386).

*Second.* It is also clear from numerous decisions of this Court that in order to present a case or controversy, so as "to entitle a private individual to invoke the judicial power to determine the validity of executive or legislative action he must show that he has sustained or is immediately in danger of sustaining a direct injury as the result of that action and it is not sufficient that he has merely a general interest common to all members of the public." *Ex parte Levitt*, 302 U.S. 633, 634.

Otherwise stated, the litigant must have "some personal and direct interest in the subject of the litigation" (*Newman v. United States*, 238 U.S. 537, 550); it is not sufficient simply to assert "the right, possessed by every citizen, to require that the government be administered according to law, and that the public moneys be not wasted" (*Fairchild v. Hughes*, 258 U.S. 126, 129-130); and it is likewise insufficient to assert that the plaintiff "suffers in some indefinite way in common with people generally" (*Doremus v. Board of Education*, 342 U.S. 429, 434).

We note in passing that the nature of the present action makes it unnecessary to consider numerous aspects of the rules governing standing. Thus, since the appellee Irvis did not sue as a taxpayer, there is no need to examine the present status of a taxpayer's standing. Cf. *Flast v. Cohen*, 392 U.S. 83,

with *Frothingham v. Mellon*, 262 U.S. 447. Similarly, since he did not sue as a competitor, there is no occasion to inquire into a competitor's standing (cf. *Data Processing Service v. Camp*, 397 U.S. 150, and *Investment Co. Institute v. Camp*, 401 U.S. 617, with *Alabama Power Co. v. Ickes*, 302 U.S. 464). And, since he sued as an individual, the status of an organization to sue on his behalf (e.g., *NAACP v. Alabama*, 357 U.S. 449) is irrelevant.

What is relevant here, however, and indeed highly relevant, is the undoubted rule that no litigant has standing to complain of third parties' injuries. "Litigants may challenge the constitutionality of a statute only in so far as it affects them." *Fleming v. Rhodes*, 331 U.S. 100, 104; *Granite Falls State Bank v. Schneider*, 319 F. Supp. 1346 (W.D. Wash.), affirmed, June 1, 1971 (No. 1394, this Term). Thus, an employer may not obtain relief on the ground of asserted injuries to employees (*Virginian Ry. Co. v. Federation*, 300 U.S. 515, 558; *Carmichael v. Southern Coal & Coke Co.*, 301 U.S. 495, 513), and a doctor has no standing to sue on behalf of alleged infringements suffered by his patients (*Tileston v. Ullman*, 318 U.S. 44)—unless he has himself been prosecuted (*Griswold v. Connecticut*, 381 U.S. 479, 481).

In our view, it is the latter element, of personal injury or detriment, that underlies the standing aspect of *Griswold v. Connecticut*, 381 U.S. 479, as well as of two additional cases that at first glance appear to look the other way, *Barrows v. Jackson*, 346 U.S. 249, and *Sullivan v. Little Hunting Park*, 396 U.S. 229. In both of the latter decisions, a white citizen was permitted to assert the rights of non-whites under the doctrine of *Shelley v. Kraemer*, 334 U.S. 1.

But in the first one, the defendant Jackson had been sued for \$11,600 because of her violation of a restrictive covenant, while in the second the plaintiff Sullivan had actually been expelled from Little Hunting Park because he transferred his membership therein to a Negro. Consequently in both cases the party setting up the rights of others was either actually injured, or would have been, had the unlawful restriction been given effect.

Accordingly, without further multiplication of incidents, we deduce the following general rule: An individual invoking the judicial power must show an interest personal to himself, an injury peculiar to himself, and a personal interest or stake in the outcome. That much is plain from decisions over a long period and in widely varying situations. *Tyler v. Court of Registration*, 179 U.S. 405, 406; *Baker v. Carr*, 369 U.S. 186, 204; *Flast v. Cohen*, 392 U.S. 83, 99, 101.

Applying those two principles to the present case, it becomes apparent that the three-judge court lost jurisdiction once the proceedings before it demonstrated that plaintiff was not interested in obtaining personal redress, but sought only a decree that was punitive, abstract, and essentially legislative in nature.

As we have shown under Point I, the complaint set forth a case within the jurisdiction of a three-judge court. Moreover, plaintiff undoubtedly stated an arguable *prima facie* case for redress under 42 U.S.C. § 1983 (*supra*, p. 5), on which he relied: He had been denied service because of his race when brought on the premises of Moose Lodge No. 107 as a guest. But—

1. He sought no damages.

2. He sued as an individual and not as a member of his class.

3. He alleged no desire to become a member of the Moose Lodge.

4. To the contrary, he asserted in a written pleading that "The members of Defendant Moose Lodge are free to associate with whom they please" (A. 46).

5. And when Moose Lodge sought a modification of the decree that would have prevented any repetition of the incident which triggered the present litigation, so that the plaintiff when next brought to the club premises as the guest of a member could not again have been refused service because of his race (A. 42-44), plaintiff vigorously opposed, saying (A. 47):

"Nothing in Plaintiff's Complaint, nothing in Plaintiff's argument, nothing in the Court's Opinion, nothing in the Court's Decree seeks to prevent Defendant Moose Lodge from engaging in any racially discriminatory activities or to say that such activities are illegal. All that Plaintiff's Complaint, Plaintiff's argument, the Court's Opinion and the Court's Decree state is that it is illegal for the Commonwealth of Pennsylvania to issue a club liquor license to Defendant Moose Lodge as long as Defendant Moose Lodge wishes to continue its discriminatory practices. Thus, the effect of the Decree is to prevent the State from doing something, not to prevent Defendant Moose Lodge from doing anything."

Otherwise stated, the decree as it now stands gives plaintiff no redress whatever for any injury suffered; he has formally refused a modification that would make repetition impossible; he insisted on, and has obtained, a decree that embodies a generalized and abstract con-



stitutional theory, in substance that all actions of a state liquor licensee are automatically transformed into state action; and, while admitting the right of Moose Lodge members to associate with persons of their own choice and hence to discriminate, has insisted on depriving them of a liquor license which, he has stipulated, would result in its loss of membership, and in a serious impairment in consequence of its ability to carry on its own benevolent purposes or to contribute to those of its parent body (Moose Ans., Fourth Affi. Def., ¶ 1, and Fifth Affi. Def., ¶ 1, A. 19, 20; stipulated as true, ¶ B3, A. 25).

In other words, plaintiff has been awarded a decree that punishes the Moose Lodge, that enforces an abstract theory of licensing as to which plaintiff has no more interest than any other of the nearly twelve million inhabitants of the Commonwealth of Pennsylvania, that affords him no personal redress whatever, and that because of his objection contains no provision that would have precluded a recurrence of the incident of which he made complaint.

Thereafter, plaintiff emphasized to this Court that his interest lay only in abstract and essentially legislative declarations. He said (Motion to Affirm 2, 9):

"While agreeing that appellant was otherwise a purely private organization and free to engage in such discrimination if it so desired, Irvis contended appellant could not simultaneously enjoy the privilege of holding and using to its benefit a Pennsylvania club liquor license. Accordingly, Irvis asked that the Commonwealth of Pennsylvania be removed from participation in appellant's pattern of racial discrimination by revoking appellant's club liquor license.

\* \* \* \* \*

"Irvis has not sought to limit the right of association of anyone. If individuals, as individuals or in groups, wish to exclude him from their private associations because he is a Negro, he recognizes their right to do so. But a constitutionally protected right of association does not extend its scope to the obtaining of alcoholic beverages within the confines of a racially discriminating private club."

This solemnly asserted position, in the light of plaintiff's repudiation in the district court of personal redress or remedy for any injury he himself claimed to have suffered, is fatal to the continuation of the litigation. The jurisdiction of the district court has been destroyed, in the elemental sense of leaving nothing on which the judicial power can act. For, as this Court has said, "it is not sufficient that he has merely a general interest common to all members of the public." *Ex parte Levitt*, 302 U.S. at 634.

Consequently this cause in its present posture does not constitute a Case or Controversy in the constitutional Article III sense, but, to the contrary, involves only a "difference or dispute of a hypothetical or abstract character." *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 240. From this it follows that the judgment below must be reversed, with directions to dismiss the complaint for lack of Article III jurisdiction.

But even if plaintiff were afforded an opportunity to reconsider his position on the final decree so that it would indeed afford him personal redress, any such step would be unavailing.

Reversal is still required, because, properly viewed, plaintiff has suffered no injury: His civil rights were

not invaded, no state action is involved, and the decision below is substantively erroneous in numerous aspects. We therefore turn to the merits to articulate the foregoing necessarily conclusory assertions.

**III/ THE RIGHT OF INDIVIDUALS TO CHOOSE THEIR SOCIAL INTIMATES SO AS TO EXPRESS THEIR OWN PREFERENCES AND DISLIKES, AND TO FASHION THEIR PRIVATE LIVES BY FORMING OR JOINING A CLUB, IS AN ASPECT OF THE BASIC CONSTITUTIONAL RIGHT OF PRIVACY AND PRIVATE ASSOCIATION THAT IS PROTECTED BY THE FIRST AMENDMENT AGAINST GOVERNMENTAL INTRUSION OR LIMITATION.**

**A. THE BASIC CONSTITUTIONAL RIGHT OF PRIVACY AND PRIVATE ASSOCIATION EXTENDS TO MEMBERSHIP IN A PRIVATE CLUB.**

The clearest formulation in this Court's reports of the precise constitutional rights that the Moose Lodge and its members assert—and of course the appellant here has standing to assert the rights of its members, e.g., *NAACP v. Alabama*, 357 U.S. 449, 458-460—is found in *Bell v. Maryland*, 378 U.S. 226, 313, where three members of the Court said (footnote omitted):

“ \* \* \* the Congress that enacted the Fourteenth Amendment was particularly conscious that the ‘civil’ rights of man should be distinguished from his ‘social’ rights. Prejudice and bigotry in any form are regrettable, but it is the constitutional right of every person to close his home or club to any person or to choose his social intimates and business partners solely on the basis of personal prejudices including race. These and other rights pertaining to privacy and private association are themselves constitutionally protected liberties.”

Again, in *Evans v. Newton*, 382 U.S. 296, 298-299, the Court gave expression to the same rights, sharply

contrasting in the process private from public accommodations (footnote omitted):

"There are two complementary principles to be reconciled in this case. One is the right of the individual to pick his own associates so as to express his preferences and dislikes, and to fashion his private life by joining such clubs and groups as he chooses. The other is the constitutional ban in the Equal Protection Clause of the Fourteenth Amendment against state-sponsored racial inequality, which of course bars a city from acting as trustee under a private will that serves the racial segregation cause. *Pennsylvania v. Board of Trust*, 353 U.S. 230. A private golf club, however restricted to either Negro or white membership is one expression of freedom of association. But a municipal golf course that serves only one race is state activity indicating a preference on a matter as to which the State must be neutral."

So far as we are aware, no other decision here has discussed the constitutional right of private association that is reflected in private club membership, although there have been numerous cases, particularly in recent years, devoted to the constitutional protection accorded privacy and freedom of association in varying other contests.

Thus it was said in 1886, eighty-five years ago, in the landmark case of *Boyd v. United States*, 116 U.S. 616, 630, that the Fourth and Fifth Amendments "apply to all invasions, on the part of the Government and its employees, of the sanctity of a man's home and the privacies of life."

Some sixty years later, Mr. Justice Brandeis in *Olmstead v. United States*, 277 U.S. 438, 478, made his



oft-quoted observation about "the right to be let alone—the most comprehensive of rights and the right most valued by civilized men." Since then, by reason of the foregoing comments and, more immediately, based on what was said for the Court in *Wolf v. Colorado*, 338 U.S. 25, 27, that what "is at the core of the Fourth Amendment" is "the security of one's privacy against arbitrary intrusion by the police," it is now established doctrine that "the principal object of the Fourth Amendment is the protection of privacy rather than property." *Warden v. Hayden*, 387 U.S. 294, 304; *Mapp v. Ohio*, 367 U.S. 643, 656.

Similarly, the constitutional right of association protects membership lists from disclosure (*NAACP v. Alabama*, 357 U.S. 449; *Bates v. Little Rock*, 361 U.S. 516; *Gibson v. Florida Legislative Comm.*, 372 U.S. 539), and by parity of reasoning protects the individual against disclosure of his memberships (*Shelton v. Tucker*, 364 U.S. 479). The right to associate for the purpose of assisting persons who seek legal redress for infringement of their rights prevails even over a state's power to regulate the practice of law (*NAACP v. Button*, 371 U.S. 415). The citizen's right of association likewise underlay the holding that he could not by blanket proscription be denied defense employment because of membership in the Communist Party (*United States v. Robel*, 389 U.S. 258). The constitutional right to privacy permits the citizen to possess obscene matter in his own home (*Stanley v. Georgia*, 394 U.S. 557), though at this writing it is unclear whether he may import such matter from abroad even for such personalized use (*United States v. Thirty-Seven Photographs*, No. 133, this Term, decided May 3, 1971; *United States v. Various Articles of "Obscene"*



*Merchandise*, No. 706, this Term, probable jurisdiction noted, May 17, 1971).

Perhaps the most comprehensive listing of the privacy cases will be found in *Griswold v. Connecticut*, 381 U.S. 479, which struck down a statute forbidding use of contraceptives as a violation of the right of marital privacy, "a relationship lying within the zone of privacy created by several fundamental constitutional guarantees" (p. 485). The Court said (pp. 482, 484, 485):

"The association of people is not mentioned in the Constitution nor in the Bill of Rights. The right to educate a child in a school of the parents' choice—whether public or private or parochial—is also not mentioned. Nor is the right to study any particular subject or any foreign language. Yet the First Amendment has been construed to include certain of those rights.

\* \* \*

"The foregoing cases suggest that specific guarantees in the Bill of Rights have penumbras, formed by emanations from those guarantees that help give them life and substance. See *Poe v. Ullman*, 367 U.S. 497, 516-522 (dissenting opinion). Various guarantees create zones of privacy. The right of association contained in the penumbra of the First Amendment is one, as we have seen. The Third Amendment in its prohibition against the quartering of soldiers 'in any house' in time of peace without the consent of the owner is another facet of that privacy. The Fourth Amendment explicitly affirms the 'right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.' The Fifth Amendment in its Self-Incrimination Clause enables the citizen to create a zone of privacy, which government may not force him to surrender to his detriment. The Ninth Amend-

ment provides: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

\* \* \*

"We have had many controversies over these penumbral rights of 'privacy and repose.' See, e.g., *Breard v. Alexandria*, 341 U.S. 622, 626, 644; *Public Utilities Comm'n v. Pollak*, 343 U.S. 451; *Monroe v. Pape*, 365 U.S. 167; *Lanza v. New York*, 370 U.S. 139; *Frank v. Maryland*, 359 U.S. 360; *Skinner v. Oklahoma*, 316 U.S. 535, 541. These cases bear witness that the right of privacy which presses for recognition here is a legitimate one."

The Fourth Amendment cases, already cited, were also referred to, but no mention was made concerning the right of association as expressed in membership in private clubs.

But what was said in one of the concurring opinions in *Gibson v. Florida Legislative Comm.*, 372 U.S. 539, is amply broad enough to reach the club aspect of the right of private association. We quote, omitting footnotes, from pp. 565, 570, and 575-576:

"But the associational rights protected by the First Amendment are in my view much broader and cover the entire spectrum in political ideology as well as in art, in journalism, in teaching, and in religion.

"In my view, government is not only powerless to legislate with respect to membership in a lawful organization; it is also precluded from probing the intimacies of spiritual and intellectual relationships in the myriad of such societies and groups that exist in this country, regardless of the legislative purpose sought to be served.

\* \* \*

" \* \* \* the views a citizen entertains, the beliefs he harbors, the utterances he makes, the ideology he embraces and the people he associates with are no concern of government. That article of faith marks indeed the main difference between the Free Society which we espouse and the dictatorships both on the Left and on the Right.

\* \* \*

"Where government is the Big Brother, privacy gives way to surveillance. But our commitment is otherwise. By the First Amendment we have staked our security on freedom to promote a multiplicity of ideas, to associate at will with kindred spirits, and to defy governmental intrusion into these precincts."

We think it well at this juncture to recall expressions from some of the decisions already cited that emphasize the fundamental nature of the right of association.

Thus, in *Shelton v. Tucker*, 364 U.S. 479, 485, the Court said that "to compel a teacher to disclose his every associational tie is to impair that teacher's right of free association, a right closely allied to freedom of speech and a right which, like free speech, lies at the foundation of a free society. *De Jonge v. Oregon*, 299 U.S. 353, 364; *Bates v. Little Rock*, *supra*, [361 U.S.] at 522-523."

And, in *United States v. Robel*, 389 U.S. 258, 263, the Court said that "the operative fact upon which the job disability depends is the exercise of an individual's right of association, which is protected by the provisions of the First Amendment. [Footnote 7 in the original: "Our decisions leave little doubt that the right of association is specifically protected

by the First Amendment." (Citing cases.)] Wherever one would place the right to travel on a scale of constitutional values, it is clear that those rights protected by the First Amendment are no less basic in our democratic scheme."

The extent to which the earlier cases upholding statutory restrictions on the right of association have current vitality is unclear. The New York statute that required the Ku Klux Klan to submit its membership lists to the authorities was sustained in *Bryant v. Zimmerman*, 278 U.S. 63; but that decision was distinguished in *NAACP v. Alabama*, 357 U.S. 449, 465-466, on the grounds that the particular character of the Klan's activities involved unlawful intimidation and violence, and that the Klan, unlike the NAACP in the later case, had not complied with the state regulatory statute in any respect.

A Mississippi statute that forbade students at state operated institutions to belong to fraternities was unanimously upheld in *Waugh v. Mississippi University*, 237 U.S. 589. Whether that decision was overruled *sub silentio* in *Tinker v. Des Moines School Dist.*, 393 U.S. 503 (see discussion of earlier case in a dissent, 393 U.S. at 522-524), or whether it is still law in its original context (*Passell v. Fort Worth Independent School District*, 453 S.W. 2d 888 (Téx. Civ. App.), appeal dismissed and certiorari denied, No. 1538, this Term, May 17, 1971), remains to be seen.

But on the assumption that the *Waugh* case still governs, it is obviously distinguishable. The state, after all, has a vital, continuous, and continuing interest in education, and to hold that it may regulate or even limit the associational freedom of the persons



it educates at public expense is far from saying that it has equal powers over private schools or colleges, or, *a fortiori*, over outside adults who form and belong to private clubs.

Certainly as to outsiders who are *sui juris* and who do not attend state-supported schools or colleges, the situation is vastly different, in kind rather than degree. For the constitutional right of association is a broad one, which constitutes a basic freedom.

That right, assuredly, cannot be narrowly limited to meeting with one's fellows on the street, or simply to withholding membership or membership lists from scrutiny. It is "the right of the individual to pick his own associates so as to express his preferences and dislikes, and to fashion his private life by joining such clubs and groups as he chooses." *Evans v. Newton*, 382 U.S. 296, 298. " \* \* \* it is the constitutional right of every person to close his home or club to any person or to choose his social intimates and business partners solely on the basis of personal prejudices including race. These and other rights pertaining to privacy and private association are themselves constitutionally protected liberties." *Bell v. Maryland*, 378 U.S. 226, 313.

**B. MOOSE LODGE NO. 107 IS A PRIVATE CLUB BY EVERY RECOGNIZED TEST, AND THE PARTIES HAVE SO STIPULATED.**

We have set out in subpoint B of the Statement, *supra*, pp. 12-15, quoting extensively from the parties' stipulations below, the factors that make Moose Lodge No. 107 a private club, and that underlie the stipulated conclusion (A. 23) that "Defendant Lodge is, in all respects, private in nature and does not appear to have any public characteristics."



A recent decision, *Wright v. Cork Club*, 315 F. Supp. 1143, 1153 (S.D. Tex.),<sup>3</sup> sets out the minimum standards for a private club seeking to come within the exemption in § 201(e) of the Civil Rights Act (*supra*, p. 6):

"(1) An organization which has permanent machinery established to carefully screen applicants for membership and who selects or rejects such applicants on any basis or no basis at all; (2) which limits the use of the facilities and the services of the organization strictly to members and bona fide guests of members in good standing; (3) which organization is controlled by the membership either in the form of general meetings or in some organizational form that would and does permit the members to select and elect those member officers who control and direct the organization; (4) which organization is non-profit and operated solely for the benefit and pleasure of the members; and (5) whose publicity, if any, is directed solely and only to members for their information and guidance."

• Moose Lodge No. 107 meets all five of the foregoing criteria.

1. It has a careful screening machinery for membership applicants (Stip., ¶ 3, A. 23).

2. It limits the use of its facilities to members and guests (Stip., ¶ 4 (a) and (b), A. 23-24)—and where it does not, in the case of catering, its own membership restrictions are not applied, so that all comers are in fact served (Stip., ¶ 6, A. 25).

3. It is controlled by its membership (Moose General Laws, §§ 53.1-53.8, pp. 39-41 of Appendix G to J.S., and see generally, Title V, Lodge Organization, *id.* at pp. 38-50).

4. It is a non-profit corporation, and was incorporated accordingly (Supp. Stip., ¶ 2, A. 28).

5. The record reflects no publicity whatever on the part of Moose Lodge No. 107 to attract public patronage.

Accordingly, Moose Lodge No. 107 has none of the indicia that have evoked rulings that the "club" in question was not in fact what it purported to be. We list some representative non-club factors just below.

A. No exclusiveness—open to all comers—white skin the only requirement. *Sullivan v. Little Hunting Park*, 396 U.S. 229, 236; *Stout v. YMCA*, 404 F.2d 687 (C.A. 5); *United States v. Richberg*, 398 F.2d 523 (C.A. 5); *Nesmith v. YMCA*, 397 F.2d 96 (C.A. 4); *Wright v. Cork Club*, 315 F. Supp. 1143 (S.D. Tex.); *United States v. Jordan*, 302 F. Supp. 370 (E.D. La.); *United States v. Clarksdale King & Anderson Co.*, 288 F. Supp. 792 (N.D. Miss.); *United States v. Beach Associates, Inc.*, 286 F. Supp. 801 (D. Md.); *United States v. Jack Sabin's Private Club*, 265 F. Supp. 90 (E.D. La.); *United States v. Northwest Louisiana Restaurant Club*, 256 F. Supp. 151 (W.D. La.); *Lackey v. Sacoolas*, 411 Pa. 235, 191 A. 2d 395.

B. Sham because mere change of name following earlier commercial status. *United States v. Richberg*, 398 F.2d 523 (C.A. 5); *United States v. Clarksdale King & Anderson Co.*, 288 F. Supp. 792 (N.D. Miss.); *United States v. Jack Sabin's Private Club*, 265 F. Supp. 90 (E.D. La.); *United States v. Northwest Louisiana Restaurant Club*, 256 F. Supp. 151 (W.D. La.); *Castle Hill Beach Club v. Arbury*, 2 N.Y. 2d 596, 142 N.E. 2d 186; *Gillespie v. Lake Shore Golf Club*, 91 N.E. 2d 290 (Oh. App.).

C. Purely commercial operation: *United States v. Richberg*, 398 F.2d 523 (C.A. 5); *Wright v. Cork Club*, 315 F. Supp. 1143 (S.D. Tex.); *United States v. Johnson Lake, Inc.*, 312 F. Supp. 1376 (S.D. Ala.); *Bell v. Kenwood Golf & Country Club*, 312 F. Supp. 753, 757, 758, 759 (D. Md.).

D. Solicitation of public patronage. *Daniel v. Paul*, 395 U.S. 298.

See also ch. 6, "Public Accommodations", in M. R. Konvitz and T. Leskes, *A Century of Civil Rights* (N.Y. 1961); J. P. Murphy, Jr., *Public Accommodations: What is a Private Club?*, 30 Mont. L. Rev. 47 (1968); Note, *Public Accommodations Laws and the Private Club*, 54 Geo. L.J. 915 (1966).

There is no need to continue the discussion or to extend the documentation. All concerned—the parties and the court below—are agreed that Moose Lodge No. 107 is a bona fide private club by any test, and that it is not in fact open to the public.

**C. TO TAKE AWAY FROM MOOSE LODGE NO. 107 ANY STATE LICENSE WHATEVER BECAUSE ITS MEMBERS EXERCISED THEIR CONSTITUTIONAL RIGHTS OF PRIVACY WOULD UNJUSTIFIABLY IMPINGE UPON THOSE RIGHTS.**

Since the members of Moose Lodge No. 107 have in the exercise of their constitutional right of private association indicated their preference and dislikes, they cannot be hampered in such exercise merely because public officials—including the members of the court below—do not share those preferences or entertain different dislikes. A situation in point is the familiar doctrine of unconstitutional conditions. E.g., *Ludwig v. Western Union Tel. Co.*, 216 U.S. 146; *Harrison v. St. Louis & S.F.R. Co.*, 232 U.S. 318; *Donald v. Phila-*

*delphia & R. Coal Co.*, 241 U.S. 329; see c. 8, "The Doctrine of Unconstitutional Conditions," in G. C. Henderson, *The Position of Foreign Corporations in American Constitutional Law* (Cambridge, 1918). No one can lawfully be penalized for exercising constitutionally conferred rights.

So here: Just because other individuals might not agree with the Moose Lodge and prefer other membership restrictions, as the court below indeed did when approving (A. 40) "private clubs which limit participation to those of a shared religious affiliation or a mutual heritage in national origin," is no reason for denying Moose Lodge No. 107 a liquor license, even though that license emanates from the Commonwealth of Pennsylvania.

For a club, necessarily, encompasses facilities for food and drink, else it would be but a barren barracks. A club bar, accordingly, is a social nexus—but it is more: As a realistic matter, it is the bar that offsets the invariable restaurant deficit (growing larger everywhere as labor costs continue their rise), and which makes possible virtually every club's continued existence.<sup>1</sup> Consequently to deny a private club a liquor license is to doom that club to die—and thus substantially to destroy its members' rights of association.

The appellee Iryis's sneer (Motion to Affirm 10), that the foregoing means that "appellant has 'let the cat out of the bag,' so to speak, when it admits that the

<sup>1</sup> The problem of restaurant deficit in the absence of liquor sales is not restricted to clubs; it affects every non-commercial establishment. See H.R. Rep. 92-205 (May 18, 1971), reporting a deficit of over \$269,000 in the operation of the House of Representatives restaurant that was expected to reach \$379,000 by end of F.Y. 1971.



sale of liquor is the economic foundation on which appellant's existence rests," overlooks his own stipulated admission that denial of a liquor license to the Moose Lodge would greatly impair not only its membership but also its capacity for carrying forward its own benevolent purposes and for contributing to the purposes of the Supreme Lodge (Moose Ans., Fourth Affi. Def., A. 19; *id.*, Fifth Affi. Def., A. 20; both admitted in ¶ B3, A. 25).

Pointing to the bar's proceeds as economically vital is far from even suggesting that bar sales constitute the Moose Lodge's primary purpose. For one thing, that Lodge could never have received a license on any such footing; liquor sales by statute must "be only secondary" to permit the licensee to qualify as a club (Pa. Liquor Code, § 102; pp. 7-8 of Appendix F to J.S.). For another, the parties stipulated (¶ 2, A. 21-22), and the court below found as a fact (A. 31, note 2), that the basic objects and purposes of Moose Lodge No. 107 were exclusively fraternal and eleemosynary.

If the state must withdraw liquor licenses from admittedly private clubs having racial restrictions (though not from those with religious or ethnic distinctions), then why must not the state (or its municipalities, which are of course simply arms of the state, e.g., *Trenton v. New Jersey*, 262 U.S. 182), similarly withdraw other licenses covering elements that are a part of and indeed necessary to the very concept of private association, such as shelter, food, and water?

Every club needs an occupancy permit for its clubhouse, a health permit for its restaurant, water supply for sanitation (apart from serving as mixer for drinks), and, necessarily, heat and light for simple



habitation. Where utilities are publicly owned, water and power are of course supplied only by subdivisions of the state. And that is actually the situation here: It is the City of Harrisburg that supplies Moose Lodge No. 107 with water, with steam for heat, and with trash collection services.

We show below, pp. 66-69, that the test of "pervasiveness" espoused by the court below (A. 34) is in truth no test at all, and we show also, pp. 70-71, that the Liquor Control Board's Regulation 113 relating to clubs (pp. 147-149 of Appendix F to J.S.) is not pervasive by any rational standard, but has as its sole purpose the prevention of precisely the kinds of evasion that we have catalogued above (pp. 54-55), under which commercial enterprises by sham and subterfuge seek shelter under the private club umbrella—a point that our adversary concedes (Motion to Affirm 8).

We do not contend for a moment that a state must regard private clubs as extraterritorial enclaves into which it cannot enter for any purpose. Of course a state or its subdivisions may close club premises if they are unsafe or if they become the locus of palpably illegal activity. Of course the health inspector can shut down a club restaurant if the kitchen is unsanitary. Of course the city can shut off power and water if the club fails to pay its bills for such services.

But, even on the violent assumption that the issuance of any license essential to the club's functioning constitutes state action—and under the next Point we demonstrate the utter untenability of that assumption—even a state-action license, however, may not be withheld or revoked because of the nature of the simon pure private club's membership restrictions—because

the imposition of those restrictions, see *Bell v. Maryland*, 378 U.S. 226, 313, is itself an exercise of the constitutionally protected liberties of privacy and private association.

**IV. THE ISSUANCE OF A LIQUOR LICENSE TO A PRIVATE CLUB DOES NOT TRANSFORM THAT CLUB'S ACTS INTO STATE ACTION SO AS TO BE SUBJECT TO THE FOURTEENTH AMENDMENT.**

In the present case, the court below rewrote the Equal Protection Clause to reach purely private action, drawing in the process a wholly unsupportable distinction between racial and religious discrimination. The court below admitted that (A. 33) "This case presents a situation which is one of first impression," and it is such because the court's holding and reasoning are plainly contrary to principle and are moreover wholly without support in the authorities. Indeed, we might with justice characterize the result reached as a classic instance of invention—because that result would not have been obvious to those skilled in the art. *Graham v. John Deere Co.*, 383 U.S. 1.

After all, the Equal Protection Clause provides—and here as elsewhere in constitutional interpretation it is well to start with the text (*supra*, p. 4)—the Equal Protection Clause provides that "No State shall \* \* \* deny to any person within its jurisdiction the equal protection of the laws." The Constitution says "No State," not "No club," and not "No group of private individuals."

Accordingly, three members of the Court have emphatically rejected the concept that underlies the decision below (*Bell v. Maryland*, 378 U.S. 226, 333):

"It is true that the State and city regulate the restaurants—but not by compelling restaurants to

deny service to customers because of their race. License fees are collected, but this licensing has no relationship to race. Under such circumstances, to hold that a State must be held to have participated in prejudicial conduct of its licensees is too big a jump for us to take. Businesses owned by private persons do not become agencies of the State because they are licensed; to hold that they do would be completely to negate all our private ownership concepts and practices."

What was said there had application to businesses catering to the public. *A fortiori*, the state does not participate in the actions of a private club to whom it has issued a license, where such club is not in fact open to the public.

We now proceed to document and expand the foregoing conclusion.

**A. THE ACTIVITIES OF A STATE LICENSEE WITHOUT ANY PUBLIC ASPECTS WHATEVER DO NOT CONSTITUTE STATE ACTION FALLING WITHIN THE FOURTEENTH AMENDMENT.**

At the heart of this case are the stipulated facts showing that the Moose Lodge is so completely private in its every aspect as to render completely inapplicable all of the decisions relied on by the court below in its effort to transform the Moose Lodge's actions into state action. By way of summary, "Defendant Lodge is, in all respects, private in nature, and does not appear to have any public character" (Stip., ¶ 4(a); A. 23); supporting details, drawn from the stipulation, appear at large in part B of the Statement, *supra*, pp. 12-15.

Those stipulated facts distinguish the present case from every one of the decisions invoked by the court below or adduced in the Motion to Affirm.

1. "Defendant Moose Lodge conducts all of its activities in and from a building which is owned by it" (Stip., ¶ 5, A. 24). Contrariwise, operation on publicly owned property was the basis for finding state action in *Burton v. Wilmington Pkg. Auth.*, 365 U.S. 715; *Turner v. City of Memphis*, 369 U.S. 350; *Wimbish v. Pinellas County*, 342 F.2d 804 (C.A. 5); *McQueen v. Druker*, 438 F.2d 781 (C.A. 1); *Wesley v. City of Savannah*, 294 F. Supp. 698 (S.D. Ga.); and *Statom v. Prince George's County*, 233 Md. 57, 195 A.2d 41; cf. *Palmer v. Thompson*, No. 107, decided June 14, 1971.

2. "Defendant Moose Lodge does not conduct any function or activity in conjunction with any public or community group. It does not hold itself out as conducting any community or public activity." (Stip., ¶ 5, A. 24-25.) Contrariwise, the performance of a public function was the basis for finding state action in *Evans v. Newton*, 382 U.S. 296 (maintenance of a park); *Public Utilities Comm. v. Pollak*, 343 U.S. 451 (operation of transit line); *Terry v. Adams*, 345 U.S. 461 (conduct of primary election); *Commonwealth of Pennsylvania v. Brown*, 392 F.2d 120 (C.A. 3), certiorari denied, 391 U.S. 921 (operation of college); *Hawkins v. North Carolina Dental Society*, 355 F.2d 718 (C.A. 4) (conduct of examinations for admission to practice; participation in health regulation).

3. "Defendant Moose Lodge \* \* \* has never been the recipient of any public funds. None of its activities, including but not limited to, the acquisition of the building site, the construction of its building or any phase of its operation, was or is financed by public funds or obligations." (Stip., ¶ 5, A. 24.) Contrariwise, the receipt of public funds was the basis for finding state



action in, e.g., *Smith v. Hampton Training School for Nurses*, 360 F.2d 577 (C.A. 4); *Simkins v. Moses H. Cone Memorial Hospital*, 323 F.2d 959 (C.A. 4), certiorari denied, 376 U.S. 938; and *Smith v. Holiday Inns of America*, 336 F.2d 630 (C.A. 6).

4. The only suggestion that the Moose Lodge is pursuing the common calling of an innkeeper, a matter much discussed in the sit-in cases that came before the Court at the 1962 and 1963 Terms, before enactment of the Public Accommodations Title of the Civil Rights Act of 1964, concerns the Lodge's minimal catering activities; and as to those the parties' stipulation establishes (¶ 6, A. 25) that "When it does so, Defendant Moose Lodge imposes no restrictions on the race or color of persons belonging to the outside group so using its facilities."

5. Finally, there is not the slightest suggestion in the present case, from any source, that the Moose Lodge has ever relied upon or even sought to invoke public assistance in the conduct of its affairs, the basis for finding state action on the footing of police assistance in, e.g., *Peterson v. Greenville*, 373 U.S. 244; *Lombard v. Louisiana*, 373 U.S. 267, and *Robinson v. Florida*, 378 U.S. 153; on the footing of judicial assistance in *Shelley v. Kraemer*, 334 U.S. 1; on the footing of collaborative conspiratorial conduct in *United States v. Guest*, 383 U.S. 745; and on the footing of a state-enforced custom in *Adickes v. Kress & Co.*, 398 U.S. 144.

Otherwise stated, we are not dealing here with the situation of the courts undertaking to enforce an agreement that legislators would be unable to enact on their own, nor is there involved private action in a particular direction where the state, to a greater or lesser degree, has in any way influenced the direction of private choice.



Thus, there cannot be found here even a single one of the various indicia of state action that was present in any other decided case. From this it necessarily follows that the court below fell into demonstrable error in holding that the Moose Lodge's membership requirements took on the character of state action within the Fourteenth Amendment.

(We have not overlooked *Griffin v. Breckenridge*, No. 144, decided on June 7, 1971, as this brief was going to press. That case sustained 42 U.S.C. § 1985(3) under the Thirteenth Amendment as an enforcement of the petitioners' rights of national citizenship. The Court was at pains (Part VB, pp. 18-19 of slip opinion) not to rest its decision on the scope of the Fourteenth Amendment.)

**B. EXAMINATION OF OTHER TYPES OF STATE LICENSES EMPHASIZES THE BASIC ERROR OF THE COURT BELOW, WHICH CONFUSED THE LICENSING PROCESS, WHICH IS CLEARLY STATE ACTION, WITH THE LICENSEE'S DOINGS, WHICH EQUALLY CLEARLY ARE NOT.**

The basis for state action in this case that was found by the court below; or, as the appellee Irvin now prefers to characterize it (Motion to Affirm 8), "State involvement," is that the Moose Lodge, an indubitably bona fide private club, has been issued a liquor license by the Commonwealth of Pennsylvania.

No decision cited in the opinion below, no decision of which we are independently aware, has ever considered that circumstance to constitute state action. That is because such a transformation involves a fundamental fallacy, that of confusing the licensing process, which is state action and which therefore must be non-discriminatory, with the actions of the licensee, which in a whole spectrum of activities have nothing whatever

to do with the state and in consequence do not involve state action.

Many activities in today's complex and crowded world require licenses before they can lawfully be undertaken, but that circumstance has never before—at least until the decision below—been deemed to transform individual into state action.

Every individual building his own house, or driving a car, or practicing law, requires a license. But the house-owner has absolute liberty to exclude, so does the private automobilist, and a lawyer in America (like the solicitor in England) has always enjoyed complete freedom to refuse to represent particular clients on any ground whatever, good or bad, sound or unsound, praiseworthy or otherwise.<sup>2</sup>

Other instances of state licensing will readily occur to everyone familiar with his local statute book and with the cognizant collection of municipal ordinances; there seems no need to set forth additional illustrative situations.

But surely the clearest example of the underlying fallacy of the decision below will be found in the issuance of a marriage license.

The operation of any system of marriage licensing is of course state action, and as such it is subject to the prohibitions and limitations of the Fourteenth Amendment. Thus neither Pennsylvania nor any other state

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<sup>2</sup> In this respect there is a vast gulf between the English solicitor, who has complete freedom to refuse instructions as he chooses (Sir Thomas Lund, *A Guide to the Professional Conduct and Etiquette of Solicitors* (1960) 82), and the English barrister, who must serve any client whatever (F.A.R. Bennion, *Professional Ethics* (1969) 62).

can prohibit interracial marriages (*Loving v. Virginia*, 388 U.S. 1), and, by parity of reasoning, it can not prohibit interfaith marriages.

But it plainly does not follow that persons who receive marriage licenses must accept all comers as spouses, without any discrimination whatever, whether on grounds of race, color, religion, or national origin. Yet under the reasoning of the court below, once a person has accepted and enjoyed the benefits of a marriage license, such person could not refuse to marry one who belonged to a different race.

There, in essence, is the *reductio ad absurdum* of the ruling below.<sup>3</sup>

**C. THE TEST OF "CONTINUING AND PERVASIVE REGULATION," FASHIONED BY THE COURT BELOW TO DISTINGUISH LIQUOR LICENSES FROM ALL OTHERS, IS UNTENABLE, UNSOUND, AND UNWORKABLE.**

The court below undertook to distinguish the instances we have just enumerated, saying (A. 37) that "The state's concern in such cases is minimal and once the conditions it has exacted are met the customary operations of the enterprise are free from further encroachment. Here by contrast beyond the act of licensing is the continuing and pervasive regulation of the licensees by the state to an unparalleled extent."

Examination of the proposed distinctions shows that they are, both of them, utterly untenable.

<sup>3</sup> We have not leaned very heavily on the Pennsylvania Marriage Law of 1953 (48 Purdon's Pa. Stat. Ann. §§ 1-1 to 1-25), for the reasons that Pennsylvania recognizes common law marriages (e.g., *Burados v. General Cement Products Co.*, 356 Pa. 349, 52 A. 2d 205), and that the statute expressly provides that it makes no change in common law marriages (48:§ 1-23).

1. "Continuing" regulation is not peculiar to liquor licenses, but applies to other permits that are necessary to a private club's continued existence.

The concept of continuing regulation as a distinction simply will not withstand analysis once one considers the minimal matters that are essential to any club's existence. These are a place for meeting, facilities for meals, and facilities for beverages.

As to those three, state regulation is equally a continuous process; the bar is not regulated any more continuously than the restaurant or the physical clubhouse. The building inspector does not become *functus officio* once an occupancy permit has been issued; to the contrary, he inspects the clubhouse as long as it stands lest it become too dangerous to serve as a habitation or a place of resort. If the clubhouse has an elevator, that too is subject to periodic examination to guard against its becoming unsafe. And, similarly, a club's kitchen will be continuously—and carefully—regulated, otherwise carelessness resulting in unsanitary conditions would spread disease and endanger health.

"Continuing \* \* \* regulation" (A. 37) being unavailing, we turn to see whether "pervasiveness" on fair inquiry will serve better. We can show, without any difficulty whatever, that it is equally unavailing as a foundation for the result reached below, viz., the transformation of licensee into licensor.

2. The test of "pervasiveness" is alike unsound and unworkable.

It is argued in the decision below (A. 34) that "the decisive factor is the uniqueness and the all-pervasiveness of the regulation by the Commonwealth of Pennsylvania of the dispensing of liquor under licenses granted by the state. The regulation inherent in the



grant of a state liquor license is so different in nature and extent from the ordinary licenses issued by the state that it is different in quality."

Such an approach only compounds the essential fallacy of confusing licensee with licensor, because the test suggested is actually no test at all.

When is a scheme of regulation pervasive or all-pervasive? At what point does regulation or licensing by the state reach the point where the licensee falls under a constitutional limitation that in terms is directed only at the licensing authority? And how can the degree of regulation have the effect of turning the regulated individual into a public officer or agent?

Actually, the district court's reliance on pervasiveness as the touchstone for its novel result is deficient on the face of its opinion—and on the face of the governing Liquor Code and implementing regulations.

To begin with, virtually all of the instances relied on by the court below, in order to document its discovery that liquor regulation in Pennsylvania is extensive, involved restrictions, not on private clubs, but only on commercial establishments that are open to the public (A. 34-36).

Next, a fair appraisal of the statutes and regulations governing clubs undercuts the touchstone of the opinion below.

*a. Analysis of the Pennsylvania Liquor Code relating to clubs.*

The Pennsylvania Liquor Code, while indeed comprehensive, does not unduly restrict the bona fide private club, as many of the statutory provisions are designed primarily to separate the genuine private club



from the commercial enterprise merely masquerading as one.

1. Mention has already been made (*supra*, p. 57) of Sec. 102 (pp. 7-8),<sup>4</sup> defining a club.<sup>5</sup>

2. Sec. 403 (pp. 21-23) deals with applications for hotel, restaurant and club liquor licenses. Subsection (e) at p. 22 requires a club applicant to file a club membership list, while subsection (f) at p. 22 (which is repeated in § 437(b) at p. 44) directs denial of licenses when it appears that the license would enure to the benefit of individual officers, etc., rather than to the benefit of the entire membership.<sup>6</sup>

3. Section 439 (p. 45) prescribes license fees; a club pays only \$25, retail dispensers between \$100 and \$300 depending on the size of the municipality in which they operate—a solid reason for scrutinizing the genuineness of asserted clubs.

4. Section 404 (pp. 23-24) deals with the issuance of licenses, Section 406 (p. 25) with restrictions on hours of sales, as follows:

The Liquor Code permits sales of liquor by private clubs at times and on days when such sales cannot be made by hotels or commercial establishments. The only hours during which a club may not sell alcoholic beverages are those between 3 A.M. and 7 A.M. In addition,

<sup>4</sup> In order to avoid a proliferation and repetition of references, we note here once for all that all page numbers under the present heading refer to Appendix F to the J.S.

<sup>5</sup> Sec. 403(b), p. 22, has a two-year residence requirement in Pennsylvania if the applicant is a natural person. *Quaere*, is this an unconstitutional limitation in the light of *Shapiro v. Thompson*, 394 U.S. 618?

it may not sell to non-members on Sunday. A hotel, on the other hand, must stop selling at 2 A.M. and may not sell on Sundays thereafter except between 1 P.M. and 10 P.M. See Sections 406(a), 492(5); and 492(7); pp. 25-26, 67, and 68. And only clubs may dispense liquor on election days during hours when the polls are still open. Section 406(a), pp. 25, 26; Section 492(6), p. 68.

5. The Liquor Code also provides numerous exemptions for clubs apart from the more liberal hours of sale just noted. They may by implication sell to members for off-premise consumption, (§ 442(a), p. 46); they may transfer their license to a location outside their municipality of origin if their original premises have been taken by eminent domain (§ 468(a), p. 56); they may make sales of liquor on credit to members (§ 493(2), p. 70); they are expressly exempted from the statutory quotas limiting the number of retail licenses that may be issued in a single locality until the particular quota is filled (§ 461, pp. 50-52; *Pine Grove Hose, Hook & Ladder Co. Liquor License Case*, 167 Pa. Super. 194, 75 A.2d 15; *DeAngelis Liquor License Case*, 183 Pa. Super. 388, 133 A.2d 266; *Carver Community Center Liquor License Case*, 200 Pa. Super. 17, 189 A.2d 914); and they are specifically exempted from the restrictions governing other licensees' on-premise entertainment (§ 493(10), p. 72).

We should note here that the subsection last cited, whose heading plainly—and accurately—reads “(Except Clubs),” was none the less relied on by the court below in support of its theme of “pervasive” regulation of clubs (A. 35-36)!

*b. Analysis of the Board's Regulation  
relating to clubs.*

Regulation 113 of the Liquor Control Board—"Clubs; Records Required; Catering"—(pp. 147-149) is, like the basic statutory provisions that it implements, far from "pervasive" if words are used in their dictionary sense. It shows on its face that it is designed only to differentiate clubs from places that are not clubs.

Thus, it requires the keeping of a membership record (§ 113.02), of a minute book (§ 113.06), and of corporate or association documents (§ 113.07)—all of them indicia of a bona fide private club that is not in fact open to the public.<sup>6</sup> See pp. 53-55, *supra*, and cases there cited. See also M. R. Konvitz and T. Leskes, *A Century of Civil Rights* (N. Y., 1961) 189: "An enterprise cannot be a 'distinctly private club' if it exercises no real control over membership." See also *id.* at 189-190.

The other sections of Regulation 113 deal primarily with accounts (§§ 113.03-113.05), but also cover food concessions (§ 113.10) and catering (§ 113.11). Finally, barricaded doors are forbidden (§ 113.12)—an echo of speakeasy days?—and the Board's personnel must be immediately admitted to the premises upon presentation of credentials (*ibid.*).

<sup>6</sup> Section 113.08 requires that "All club records shall be maintained in English." The court below did not consider whether that provision ran counter to its exemption (A. 40) for "private clubs which limit participation to those of \* \* \* a mutual heritage in national origin," or whether, since obviously the regulation itself constitutes state action, it runs afoul of *Meyer v. Nebraska*, 262 U.S. 390, which held unconstitutional under the Fourteenth Amendment a state statute requiring all school instruction to be in the English language.

None of the foregoing restrictions, as we have said, are "pervasive"; they simply implement the basic definition of "club" in § 102 of the Pennsylvania Liquor Code (pp. 7-8) and facilitate enforcement of the statutory limitations that are designed to prevent colorable evasion of club restrictions by essentially commercial enterprises.

It follows, therefore, that the assertion of "pervasiveness" does not accurately describe the Pennsylvania system of regulating the dispensing of liquor by clubs.

And, in any event, the notion that state regulation of a particular enterprise somehow transforms what that enterprise does into state action is completely fallacious, as recent decisions here and elsewhere demonstrate.

The Seventh Circuit recently—and rightly—rejected a similar contention, to the effect that a state's regulation of and grants of exemption to newspapers so far made them arms of the state as to forbid their rejection of editorial advertisements. *Chicago Joint Board v. Chicago Tribune Co.*, 435 F.2d 470, certiorari denied, May 17, 1971 (No. 1477; this Term).

Earlier, the Tenth Circuit had likewise rejected an argument that a state's tax exemption granted to a private college turned that college's dealings with its students into state action. *Browns v. Mitchell*, 409 F.2d 593.

And, similarly, this Court held at its last Term that the grant by a state of tax exemption to a religious body does not involve any establishment of religion. *Walz v. Tax Commission*, 397 U.S. 664.

By parity of reasoning, therefore, neither the provision in Pennsylvania's Liquor Code for "Sacramental Wine Licenses" (§ 409, pp. 31-32), nor the implementing Regulation 119 (pp. 169-171)—neither one, significantly enough, mentioned by the court below—qualifies as a "law respecting an establishment of religion," to use the language of the First Amendment. Similarly, the "pervasive" licensing by Pennsylvania under its Solicitation of Charitable Funds Act (of August 9, 1963, P.L. 628, 10 Purdon's Pa. Stat. Annot. §§ 160-1 *et seq.*) of those who solicit money for churches does not and can not transform that measure into state support of religion.

Yet, were one to follow literally the rationale of the court below, all of those several instances would involve "state action."

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The contentions in the present case that are based on the circumstances of Pennsylvania's "monopoly" system of dealing with alcoholic beverages (A. 34-37; Motion to Affirm 4-6, Point *First*) are equally unhelpful, because of their necessary implications that a different result might follow where clubs could obtain their alcoholic beverage requirements from private retailers or wholesalers, rather than being restricted to state-owned stores.

Again, no workable test is available.

Indeed, it can confidently be predicted that acceptance of the "pervasiveness"—"monopoly" guideline for finding state action where none in fact is present will lead to a further litigation explosion in the Federal



courts. For then every form of activity that is licensed by any state will be subject to judicial examination in the courts of the United States, first to ascertain the degree of "pervasiveness" that the licensing in question involves, and, second, if liquor licensing is in issue, to ascertain in addition how far the particular system under examination resembles, and how far and in what respects it differs from, the Pennsylvania system considered here:

There is no need to impose such a crushing burden on an already badly overworked Federal judiciary—because there is no justification for so distorting the Federal Constitution.

Law and fact unite in denying that a state licensee automatically becomes an agent of the state once he accepts its license.

**D. IN ACTUAL FACT, THE OPERATION OF THE PENNSYLVANIA LIQUOR CONTROL SYSTEM INVOLVES, NOT THE GRANT OF A PRIVILEGE, AS THE COURT BELOW ERRONEOUSLY HELD AND THE APPELLEE IRVIS ARGUES HERE, BUT RATHER THE IMPOSITION OF RESTRICTIONS.**

A second fundamental error underlying the ruling below is the proposition that the Pennsylvania liquor control system involves the grant of a privilege, or, as stated by the district court (A. 36), "the privilege of dispensing liquor which a licensee holds at the sufferance of the state."

The appellee Irvis, invoking an esoteric biological adjective, has stressed the same thought (Motion to Affirm 5): "The relationship between State and licensee can be described as 'symbiotic,' for the latter thereby obtains a valuable privilege not freely available

and the former obtains a source of funds not otherwise present." 7

Actually, the Pennsylvania liquor control system is one of restrictions rather than privileges, and those restrictions are emphasized rather than otherwise by the cases construing the Twenty-first Amendment that the court below cited in its opinion (A. 34 note 10): *Seagram & Sons v. Hostetter*, 384 U.S. 35, 42; *Hostetter v. Idlewild Liquor Corp.*, 377 U.S. 324, 330; *Ziffrin v. Reeves*, 308 U.S. 132, 138; *State Board v. Young's Market Co.*, 299 U.S. 59. For those decisions emphasize that since adoption of the Twenty-first Amendment many Commerce Clause concepts no longer limit a state's power over the liquor traffic. Hence we repeat that Pennsylvania's scheme is one that imposes restrictions rather than one that grants privileges.

We are aware that the complaint herein alleged that "The receipt and ownership of such a [liquor] license is a valuable privilege granted to a club by the Commonwealth of Pennsylvania through Defendant [Liquor Control] Board" (¶ 4, A. 4), and that this averment was admitted in the parties' stipulation (¶ B1, A. 25).

7 "Symbiosis, Biol. the living together of two species of organisms: a term usually restricted to cases in which the union of the two animals or plants is not disadvantageous to either, or is advantageous or necessary to both, as the case of the fungus and alga which together make up the lichen. **Symbiotic, adj.**" The American College Dictionary.

"**Symbiosis.** Association of two different organisms (usually two plants, or an animal or a plant) which live attached to each other, or one as a tenant of the other, and contribute to each other's support. \* \* \* distinguished from parasitism, in which one organism preys upon the other.

"**Symbiotic.** Associated or living in symbiosis, related to or involving symbiosis." Oxford English Dictionary.

But whether or not a particular relationship involves a privilege or something different is a matter of law rather than of fact, and a stipulation as to questions of law is ~~not controlling~~, cannot foreclose legal questions, and must be treated as a nullity. *Swift & Co. v. Hocking Valley R. Co.*, 243 U.S. 281, 289; *Estate of Sanford v. Commissioner*, 308 U.S. 39, 51; *Case v. Los Angeles Lumber Co.*, 308 U.S. 106, 114; *Cloverleaf Butter Co. v. Patterson*, 315 U.S. 148, 152.

Accordingly we approach the nature of a liquor license as an original proposition.

A state monopoly system such as Pennsylvania has adopted demonstrates clearly its restrictive nature.

First, Pennsylvania is a "monopoly" state (Op. 34-35); its Liquor Code provides for state liquor stores (§§ 301-306, pp. 17-19), which are the sole sources of alcoholic beverages, subject to certain permitted activities on the part of distributors (§ 431, pp. 35-38). Thus there are in Pennsylvania no such privately-owned liquor stores as exist in the District of Columbia and in many, many other states.

Second, Pennsylvania clubs can make sales only on particular days and at particular times, and the Commonwealth indeed imposes fewer restrictions of other kinds on clubs than on hotels or commercial enterprises. *Supra*, pp. 68-69. But the cited provisions there set out are still more restrictive than those obtaining in a private home, whose occupants are free to imbibe at every hour of the day or night.

Third, a club, like any other licensee, is forbidden by Pennsylvania law to furnish or give any liquor to any

person visibly intoxicated (Sec. 493(1), pp. 69-70). But at home the host can ply himself and guests with drink until all are sodden or worse. (The supplying of liquor to minors of course stands on a different footing. Pa. Penal Code, § 675.1, pp. 277-278.)

It follows, therefore, that the regulation of the liquor traffic involves restrictions and prohibitions—by common usage we still speak of the years 1919-1933 as the era of *Prohibition*—and that to approach the matter of lawful dispensing and ingestion of alcoholic beverages in terms of a privilege is to becloud—and distort—the legal issues that the present case involves.

Of course a state under the Twenty-first Amendment can forbid all traffic in liquor. But how many still do? Certainly it is not realistic to consider Pennsylvania's power to ban all alcohol when everyone knows that no such step is within the bounds of possibility. What Pennsylvania does in its Liquor Code, what every state and every political subdivision of a state does in its own particular plan for coming to grips with a problem that has been with mankind ever since the process of fermentation was discovered and that will continue to be present as long as life continues to exist on our planet, is to arrive at a workable *ad hoc* adjustment in respect of a matter for which there never was and never will be any single "approved solution" in the back of the book.

Absolute prohibition having been proved unworkable during a searing period of our national life, most of the adjustments accordingly simply regulate and restrict. But to conclude from this circumstance that every permissible act of dispensing and consuming liquor is to be characterized as a "privilege"—preceded by a suit-

able adjective as one warms up towards a peroration—to call every distribution of liquor for consumption a “privilege” is to allow semantics to distort reason.

Unhappily, that is just exactly what the court below did.

**E. THE EXEMPTIONS GRANTED BY THE COURT BELOW TO PRIVATE CLUBS HAVING RELIGIOUS AND ETHNIC MEMBERSHIP RESTRICTIONS RATHER THAN RACIAL ONES ADDITIONALLY EXPOSE THE UTTER FALLACY OF ITS CONTROLLING RATIONALE.**

But the most egregious error committed by the court below was its ruling that, while racial restrictions in private clubs were unconstitutional, similar religious or ethnic restrictions were entirely acceptable. To avoid any possible suggestion that we are seeking to parody the decision under review, we quote its ruling on this point verbatim (A. 40):

“Nothing in what we here say implies a judgment on private clubs which limit participation to those of a shared religious affiliation or a mutual heritage in national origin. Such cases are not the same as the present one where discrimination is practiced solely on racial grounds and therefore collides head-on against the ‘clear and central purpose of the Fourteenth Amendment . . . to eliminate all official state sources of invidious racial discrimination in the States.’ *Loving v. Virginia*, 388 U.S. 1, 10 (1967); and cases there cited.”

*Loving v. Virginia*, 388 U.S. 1, will not support for a moment the distinction between racial discrimination and religious or ethnic discrimination that the court below sought to find therein. That case involved a state statute prohibiting marriages between different races, a statute that did not prohibit marriages between per-



sons of different religious affiliations, or between persons of the same race having however different ethnic backgrounds.

Consequently to deduce from *Loving v. Virginia* that while private clubs may not draw racial lines they may nonetheless and consistently with the Constitution "limit participation to those of a shared religious affiliation or a mutual heritage in national origin" (A. 40) is once again to demonstrate that judges quite as much as counsel need periodically to be reminded that the language of this Court's opinions must be read in the light of the facts of the case under discussion. *Cohens v. Virginia*, 6 Wheat. 264, 399; *Humphrey's Executor v. United States*, 295 U.S. 602, 626-627; *Armour & Co. v. Wantock*, 323 U.S. 126, 132-133; *Green v. United States*, 355 U.S. 184, 197.

The distinction between religious and ethnic on the one hand, and racial on the other, a distinction clearly drawn by the court below, fails utterly on that court's own "state action" approach.

The court below passes as perfectly legitimate and constitutional the actions of (A. 40) "private clubs which limit participation to those of a shared religious affiliation." But once we accept the district court's proposition that possession of a state liquor license transforms a private club's restrictive membership provisions into state action, then, very obviously, to "limit participation to those of a shared religious affiliation" (A. 40) becomes unconstitutional; the Fourteenth Amendment, which is not at all limited to racial matters as the court below mistakenly supposed, forbids. The controlling ruling here is *Schwabe v. Board of Bar Ex-*

*aminers*, 353 U.S. 232, 238-239 (footnote and citations omitted; italics added):

"A State cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment. A State can require high standards of qualification, such as good moral character or proficiency in its law, before it admits an applicant to the bar, but any qualification must have a rational connection with the applicant's fitness or capacity to practice law. Obviously an applicant could not be excluded merely *because he was a Republican or a Negro or a member of a particular church*. Even in applying permissible standards, officers of a State cannot exclude an applicant when there is no basis for their finding that he fails to meet these standards, or when their action is invidiously discriminatory."

Consequently, if a private club's racial membership restrictions constitute state action, and that rationale is the core of the decision below, then the Knights of Columbus, the Knights of Pythias, the B'nai B'rith, the National Capital Democratic Club (of Washington), and the Women's National Republican Club (of New York), must all lose their liquor licenses along with the Loyal Order of Moose wherever the latter has Lodges.

Let us examine a little further the district court's curious dichotomy.

The Loyal Order of Moose not only has a membership qualification that is racial, to which alone the opinion below was directed, it also has a religious qualification: No one can be a Moose who does not "profess a belief in a Supreme Being" (Stip., A.21; Moose Constitution, Sec. 71.1, p. 59 of Appendix G to J.S.).

The court below said nothing about the clause just quoted. Yet if the Moose Constitution is metamorphosed into state action once a Moose Lodge receives a liquor license, then this provision, which obviously excludes atheists from Moose membership, is similarly invalid. A state, after all, may not bar an atheist from public office. *Torcaso v. Watkins*, 367 U.S. 488.

We suggested in our Jurisdictional Statement, by way of underseoring the absurdity of the racial versus religious-and-ethnic distinction, and "absurdity" is really the only accurate characterization possible, the not-at-all imaginary case of the black citizen who professes Judaism (p. 14 note 2). Under the ruling below, he can not be excluded because of his color but he may be barred because of his religion—an obviously nonsensical and thoroughly illogical result, certainly if that result derives from exegesis of the Fourteenth Amendment, as the ruling below purportedly does.

We could similarly suggest the equally non-imaginary case of the Jewish citizen who does not practice the faith of his fathers or who indeed has renounced it for another. How is such an individual, and his numbers run into thousands, perhaps hundreds of thousands, to be classified? This inquiry in turn presents the age-old question, whether Jewishness is a matter of race, or nationality, or religion—or perhaps a combination in varying proportions of all three. Nazi Germany, it is true, had less difficulty in determining "What is a Jew?" than (see, e.g., R. Slovenko, *Brother Daniel and Jewish Identity*, 9 St. Louis Univ. L. J. 1 [1964]), is currently being experienced by the Supreme Court of Israel, whose expertise in that particular area is at least arguably greater than was possessed by Hitler, Himmler, and Eichmann.

We have embarked on the foregoing discussion, not to engage in sociological speculation, but only to demonstrate the delusiveness of the district court's dichotomy: If Jews constitute a race, then the Fourteenth Amendment forbids a private club from adopting a policy of "No Jews allowed." But if Jews are to be regarded as "those of a shared religious affiliation" (A. 40), then the identical club policy is constitutionally unexceptionable.

When we turn to the ethnic aspect of the district court's strange distinction, we encounter similar difficulties. Indeed, the appellee Irvis's attempt to rationalize that portion of the decision below is deficient on its face. He says (Motion to Affirm 6-7) that "club B, formed for the purpose of promoting and enhancing knowledge and pride in Italian traditions and history among Americans of Italian origin, could validly limit participation to such persons—not just white Americans of Italian origin or Catholic Americans of Italian origin, but *Americans of Italian origin in general.*"

The latter italics in the foregoing quotation are ours: Where could one possibly find an American of Italian origin who was a Negro or an Asiatic or a Polynesian?

The fact is that once there is accepted the district court's concept of "a mutual heritage in national origin" (A. 40) as a legitimate and thoroughly constitutional restriction, there follows, necessarily, full acceptance of the precise racial distinction that the district court professed to reject. For if an individual's "heritage in national origin" is European, and the private club is limited to members descended from any one of a score of European nationalities, then it is, necessarily and inevitably, precisely the kind of Cauca-



sians-only organization that the court below deprived of its liquor license. Similarly, if the "heritage in national origin" is Japanese, then the private club so limited excludes impartially all whites, all blacks, and, presumably—depending on the ultimate solution of what is still an arcane anthropological mystery—all American Indians.

Thus, actually, there would be included among those losing their liquor licenses—our list is illustrative rather than inclusive—the Sons of Italy, the Polish National Alliance, the Friendly Sons of St. Patrick, the United Acadian Federation, the American Latvian Association, the Sons of Norway, St. Andrew's Society, and the Steuben Society of America. For the hard ethnic fact of the matter is that every American organization whose "mutual heritage in national origin" (A. 40) is European, must of necessity be a whites-only organization. (Possibly, having in mind the many former Cape Verde Islanders in New England, the Portuguese Continental Union of the U.S.A. stands on a different footing. But it is far outnumbered by the others just listed and by those who fall in the broader category.)

° It is unnecessary to dwell further on the theme. The quotation from the opinions below with which the present subsection commenced (A. 40; *supra*, p. 77) carries within itself irrefutable proof of the utter unsoundness of the ruling below. That portion of the opinion establishes beyond all question that a private club's membership restrictions of any kind are either unconstitutional in their entirety—which would involve, as a practical matter, the destruction of the great majority of private clubs in the entire nation—or else, and we are convinced that this is the only correct view



—that none of those restrictions, whatever they are, involve state action regardless of how many state licenses such a club needs. Liquor licenses, building permits, occupancy permits, zoning adjustments, elevator certificates, restaurant licenses—all of these emanate from the state mediately or immediately, and all of these are necessary to the private club's continued operation. But none turns what the club does into state action.

**F. EVEN IF STATE ACTION BE ASSUMED FOR PURPOSES OF ARGUMENT, THE PROPER REMEDY FOR GIVING EFFECT TO THE COMPETING CONSTITUTIONAL RIGHTS INVOLVED WOULD HAVE BEEN AN INJUNCTION PREVENTING THE LIQUOR CONTROL BOARD FROM REQUIRING THE MOOSE LODGE TO ENFORCE ITS OWN RESTRICTIVE MEMBERSHIP REGULATIONS.**

The least untenable ground taken in the opinion below was its proposition that enforcement of the Pennsylvania Liquor Control Board's Regulation 113.09 (p. 148 of Appendix F to J.S.), which affirmatively requires that "Every club licensee shall adhere to all of the provisions of its Constitution and By-laws," when read together with the Supreme Lodge's exclusion of non-Caucasian members—and, although not mentioned in the opinion, of the exclusion of atheists and (presumably) agnostics as well—amounts to state action that not only fosters but indeed directs discrimination. The court below said (A. 37-38; footnotes omitted):

"In addition to this, the regulations of the Liquor Control Board adopted pursuant to the statute affirmatively require that 'every club licensee shall adhere to all the provisions of its constitution and by-laws.' As applied to the present case this regulation requires the local Lodge to adhere to the constitution of the Supreme Lodge and thus to exclude non-Caucasians from membership in its licensed club. The state therefore has

been far from neutral. It had declared that the local Lodge must adhere to the discriminatory provision under penalty of loss of its license. It would be difficult in any event to consider the state neutral in an area which is so permeated with state regulation and control, but any vestige of neutrality disappears when the state's regulation specifically exacts compliance by the licensee with an approved provision for discrimination, especially where the exaction holds the threat of loss of the license."

Closer examination of Pennsylvania's liquor laws, however, shows that the Commonwealth's purpose is wholly different. That purpose is not the enforcement of racial membership restrictions, it is purely and simply and plainly the prevention of subterfuge.

As we have already shown in detail, pp. 68-69, *supra*, the Pennsylvania Liquor Code imposes many fewer restrictions on private clubs than on commercial establishments, notably with reference to hours of sale. This means, of course, that to the extent that a commercial dispenser of alcoholic beverages can somehow qualify as a private club, he stands to profit—because he can then sell more of such beverages than his competitors.

Consequently, unless private clubs are required strictly to enforce their constitutions and by-laws, the closing hour requirements of the Pennsylvania Liquor Code will inevitably be evaded through subterfuge, through the familiar ploy of places of public accommodation masquerading as clubs while in fact having no membership requirements whatever. See the numerous illustrative decisions cited and classified at pp. 54-55, above.

It follows that, fairly construed, the regulation seized upon by the court below as a touchstone of state action

is in reality only an appropriate means of enforcing Pennsylvania's differentiation between places of public accommodation and bona fide private clubs. Indeed, the appellee Irvis "agrees with appellant that the primary purpose of this particular provision [Regulation 113.09; p. 148] is to insure that private clubs are in fact private" (Motion to Affirm 8).

But, he adds (Motion to Affirm 9), "even the most critical reading of [the district court's] opinion will confirm that its decision would have been the same even were this regulation not present."

Even so, even assuming that the requirement in Regulation 113.09 that all clubs adhere to their constitutions and by-laws is to be given the transforming effect of turning such by-laws, etc., into state action, the result is still wrong, on either of two additional grounds,

First, the regulation can and in our view must be regarded as giving effect to the constitutionally protected rights of privacy and of association that are exemplified by the existence and operation of every private club; those are the rights already expounded above, pp. 45-52.

Or, second, a decree can and should be fashioned so as to enjoin enforcement of Regulation 113.09 insofar as it purports to implement discriminatory qualifications for membership, be they racial, ethnic, or religious. Then the state is not even arguably in the position of supporting any restrictive membership provision of any kind in even the most private of private associations.

This last, however, is an ultimate "even if" concession, not likely to be reached. Because, as we shall

now show, Congress in the Civil Rights Act of 1964, enacted to enforce the Fourteenth Amendment in the exercise of its constitutional power to do so, has exempted from the public accommodations title of that act "a private club or other establishment not in fact open to the public."

**V. THE CONGRESSIONAL EXCEPTION FOR "A PRIVATE CLUB OR OTHER ESTABLISHMENT NOT IN FACT OPEN TO THE PUBLIC" MARKS A PROPER BOUNDARY BETWEEN THE COMPETING CONSTITUTIONALLY PROTECTED LIBERTIES OF PRIVACY AND PRIVATE ASSOCIATION ON THE ONE HAND AND OF FREEDOM FROM DISCRIMINATORY STATE ACTION ON THE OTHER, AND THAT BOUNDARY SHOULD BE RESPECTED AND REAFFIRMED HERE.**

Under the two preceding points, we have shown, first, that the Moose Lodge's members were exercising their constitutionally protected liberties of privacy and of private association in limiting the qualifications of those who would be permitted to join them in that fellowship, and, second, that when the Moose Lodge was issued a liquor license that circumstance did not transform their membership restrictions into state action so as to be subject to the limitations of the Fourteenth Amendment. It followed on either ground that the judgment below was erroneous.

We now show that the same result also flows from an alternative approach, namely, that the Congressional exemption for private clubs in the Civil Rights Act of 1964, a measure passed to enforce the Fourteenth Amendment, demonstrates the Congressional understanding that such clubs when not in fact open to the public were beyond the scope of that Amendment's limitations.

A. WHEN CONGRESS IN THE CIVIL RIGHTS ACT OF 1964 PROVIDED FOR RELIEF AGAINST DISCRIMINATION IN PUBLIC ACCOMMODATIONS, IT SPECIFICALLY EXCEPTED "A PRIVATE CLUB OR OTHER ESTABLISHMENT NOT IN FACT OPEN TO THE PUBLIC".

1. President's message; House action.

The Civil Rights Act of 1964, Pub. L. 88-352, 78 Stat. 241, 42 U.S.C. §§ 2000a *et seq.*, had its genesis in President Kennedy's message to Congress of June 1963 (H.R. Doc. 124, 88th Cong., 1st sess.). The first head of that message was entitled "Equal Accommodations in Public Facilities." We would be justified in italicizing *Public*, because nothing that the President urged on the Congress in his extensive remarks under that caption (*id.*, pp. 3-5), too long to quote verbatim here, even by faintest implication suggested opening up private clubs on a non-discriminatory basis.

Responsive to the President's message, the bill that was introduced immediately thereafter (H.R. 7152, 88th Cong., 1st sess.) covered only public accommodations, and in its § 202(b) made an exception for private clubs, as follows:

"The provisions of this title shall not apply to a bona fide private club or other establishment not open to the public, except to the extent that the facilities of such establishment are made available to the customers or patrons of an establishment within the scope of subsection (a)."

As the bill was reported to the House on November 20, 1963, the text of the foregoing provision was not altered, only renumbered; former § 202(b) became new § 201(e); and, in the process of renumbering, the cross-reference to the basic coverage provision was changed to read "subsection (b)."



The limited amount of committee comment on the private club exception emphasizes its self-evident nature.

The House Judiciary Committee simply said (H.R. Rep. 914, 88th Cong., 1st sess., p. 21):

*"Section 201(e) exempts bona fide private clubs or other places not open to the public, except to the extent that their facilities are made available to customers or patrons of a covered establishment."*

Other members of that Committee (McCulloch of Ohio, Lindsay of New York, Cahill of New Jersey, Shriver of Kansas, MacGregor of Minnesota, Mathias of Maryland, and Bromwell of Iowa, had this to say (*id.*, Part 2, p. 9):

*"Turning to the 'freedom of association' contention, there is little basis for urging this principle in behalf of owners of business who regularly serve the public in general. This 'freedom' can only be claimed by the party of interest—the owner, not the customer; and the owner of a public establishment, as above mentioned, is hardly in a position to raise it. Moreover, where freedom of association might logically come into play as in cases of private organizations, title II quite properly exempts bona fide private clubs and other establishments. Finally, it must be said that even if freedom of association is considered to be affected to some degree by the application of title II, there is no question that the courts will uphold the principle that the right to be free from racial discrimination outweighs the interest to associate freely where those making the claim of free association have knowingly and for profit opened their doors to the public."*

Or, by way of summary, while all concerned recognized the need for opening up places of public accommodation, all concerned equally recognized the need for continued privacy on the part of genuinely private establishments.

Section 201(e) was not further changed in the House, which passed H.R. 7152 on February 10, 1964.

## 2. Senate discussion and amendment.

On March 23, Senator Smathers read a newspaper column written by David Lawrence, the headline of which was, "Private Clubs Face Rights Fight—Facilities Open to Members' Guests Are Not Exempt in Proposed Law" (110 Cong. Rec. 6006-07). Accordingly, Senator Smathers put this question to Senator Humphrey, in charge of the bill (*id.* 6006):

"I should like to ask the Senator from Minnesota what is his understanding with regard to the bill as it pertains to so-called private clubs?"

A colloquy ensued, in the course of which the participants agreed to "make some legislative history" (*id.* 6007-08), and Senator Humphrey undertook to expound the meaning of the private club exemption. Here are representative passages from his remarks, showing that he did not consider that the introduction of guests by a member turned such a club into one serving the public (*id.* 6008):

"'Which serves the public'—that is the controlling phrase, and is the controlling language that relates to subsection (e) when a private club loses its identity as a private club and becomes a public facility.

"To put it more precisely, the Army and Navy Club which the Senator mentioned is well known

in this community. It has a fine golf club, recreational facilities, swimming pools, dining rooms, recreational halls. It is a membership club. It is a private club and has within its by-laws provisions for members to bring in guests. It is not open to the public.

"Not everyone can stop by and say, 'Hello, my name is John Jones, and I would like to come in and have dinner,' because he would be asked for his membership card. Each membership card generally carries a number.

"If, however, a member of the club called up the manager and said, 'My friend, John Jones, is coming out to the club, and I want you to see that John Jones, his wife, and family have a nice dinner, and put it on my club card.' That means John Jones would be a guest, enjoying the hospitality of a member of the club. There is nothing in the bill that applies to such a club, except that it would be exempt.

"However, if on Saturday night, let us say, the Army and Navy Club decided it did not have enough income from its membership, and that once a week it had to open its facilities to anyone and everyone around the District of Columbia, Maryland, and Virginia, or anyone that came through; in other words, suppose it put up a big neon sign out at the gate which read, 'Tonight these facilities are open to one and all. Come one, come all. Reasonable rates, good dinner, lots of fun, dancing, and pretty girls, swimming pools, and so forth,' the club would give the whole treatment when that sign went up. But it would cease to be a private club, it would take on the character of a public facility or a public business under which it would become an institution or a facility serving the public.

"It is that simple.

"Whenever a private club loses its identity for whatever purpose it may be and becomes a facility

that readily serves the public, then it is a public facility, and the effect of the proposed statute would apply.

\* \* \* \* \*

"A private club is a fraternal, civic body. It has a purpose for existing. It has a charter, it has bylaws, and its members agree to live up to those bylaws.

"MR. SMATHERS. I agree with the Senator from Minnesota. I am frankly pleased to hear his explanation. I gather Mr. Lawrence is concerned about the phrase in section (e), subparagraph (e), which reads 'except to the extent that the facilities of such establishment are made available to the customers or patrons of an establishment within the scope of subsection (b).'

"MR. HUMPHREY. The Senator is correct.

"MR. SMATHERS. Subsection (b) has only to do with the public, and he apparently has overlooked that. What he thought was—

"MR. HUMPHREY. The Senator is correct.

"MR. SMATHERS. Because one had restaurants—

"MR. HUMPHREY. The Senator is correct.

"MR. SMATHERS. Because one had restaurants there, and people came in and guests were admitted. Thereafter it would lose the characteristics of a private club, because there was a restaurant serving a guest and, therefore, the whole thing would be opened up and the Federal Government would be able to take it over.

"MR. HUMPHREY. Exactly. My view is that that is not the case. I might go further. The Senator from Florida is a very generous, hospitable man. He likes to entertain his friends. I can well imagine that the Senator from Florida would have membership in a private club—let us take the

Army and Navy Club as an example—and might decide that in the next week or two he would like to take to dinner about 15 of his colleagues in the Senate and their wives, for a little friendly get-together. Personally I would hope that he would bring along a few other people, to liven up the party.

“MR. SMATHERS. If the Senator from Minnesota were among the guests, we would not need anyone else.

“MR. HUMPHREY. That might be true. I was trying to wangle an invitation. If the Senator were to do that, even though not one of those 15 persons was a member of the club, inasmuch as the Senator picked up the tab—because it was the Senator's evening, so to speak—that little party would not make the club take on public characteristics. It would still be a private club, because those people would be there because the Senator from Florida had invited them.

“However, if the club were trying to make ends meet—and that is not unusual these days—and the board of directors decided that a substantial section of the club's facilities should be open to the public, it would then take on the characteristic of a public place, and it thereby would lose its special exemption. That is all that is provided in the bill. I do not believe that Mr. Lawrence's worry is justified.

“If a club were established as a way of bypassing or avoiding the effect of the law, and it was not really a club—I am sure the Senator knows what I mean—and there are clubs like that in existence, where anyone can step up and pay \$2 and in that way become a member, with the \$2 being used as a kind of cover charge, that kind of club would come under the language of the bill.

“However, the kind of club Mr. Lawrence is worried about would be exempt. If the proposed



statute is not adequate to give that kind of club an exemption, and to make it crystal clear that it would be exempt, I would favor writing in clarifying language to that effect."

On April 9, 1964, Senator Magnuson, another supporter of the bill, turned to the subject of private clubs. First he read the summary of Section 201(e) already quoted (*supra*, p. 88) from the House report (110 Cong. Rec. 7404). Then he elaborated (*id.* 7407):

"Let us take a closer look at the provisions of the bill concerning private clubs and other establishments not open to the public generally. Local fraternal organizations, private country clubs, and the like are outside the reach of title II by reason of the bona fide private club exclusion.

"However, the exemption for private clubs does not apply to the extent that they open their facilities to the customers or patrons of a coverage establishment, that is, to the extent they cease to be a private club. For example, if a hotel which is covered by title II has arrangements with a private golf club whereby the hotel's guests can use the club's golf course, the club must make the course available to the hotel guests without racial discrimination. On the other hand, the club could continue to discriminate with respect to its other facilities not subject to its agreement with the hotel. It could discriminate even as to its golf course with respect to other than hotel guests, and could make its facilities available to organizations not covered by title II without conforming to the nondiscrimination requirements of the title.

"The following questions have been raised about this section of the bill:

"First. Suppose a covered motel contains a so-called private club for the recreation of its guests and makes it available to all white guests

upon the payment of a nominal fee. May it refuse to admit a Negro guest?

"No. An arrangement of this sort does not create a bona fide private club within the meaning of title II. The fact that the so-called club admits white persons who can pay the purported membership fee indicates that it is not really a private club at all.

"The clubs exempted by section 201(e) are bona fide social, fraternal, civic, and other organizations which select their own members. No doubt attempts at subterfuge or camouflage may be made to give a place of public accommodation the appearance of a private organization, but there would seem to be no difficulty in showing a lack of bona fides in these cases.

\* \* \* \* \*

"Fourth. May a private club sponsor a segregated benefit concert or other performance to which the public is invited?

"The answer is 'Yes' unless the performance is to take place in a hall which customarily presents entertainment moving in interstate commerce, including such a hall owned by the club. On the other hand, if the public is not invited to the performance, but it is presented for club members only, then segregation may occur no matter what kind of hall is used."

More than two months later, on June 13, 1964, Section 201(e) was slightly modified. On that day (110 Cong. Rec. 13697), Senator Long proposed an amendment to change the words "bona fide private club not open to the public" to read "private club not in fact open to the public," saying that

"Its purpose is to make it clear that the test of a private club, or an establishment not open to

the public, is exempt from title II, relates to whether it is, in fact, a private club, or whether it is, in fact, an establishment not open to the public. It does not relate to whatever purpose or animus the organizers may have had in mind when they originally brought the organization or establishment into existence."

Senator Humphrey, in charge of the bill, accepted the Long amendment:

"The modification is, I believe, a good one, and the language is more precise.

"The test as to whether a private club is really a private club, or whether it is an establishment, really not open to the public, is a factual one. The language of the proposed amendment reflects that objective.

"It is not our intention to permit this section to be used to evade the prohibitions of the title by the creation of sham establishments which are in fact open to the white public and not to Negroes. We intend only to protect the genuine privacy of private clubs or other establishments whose membership is genuinely selective on some reasonable basis.

\* \* \* \* \*

"I believe it tightens up the language, and makes it mean what we said it meant, rather than what someone else might feel was the intent."

After the Long amendment was then agreed to, Senator Hill proposed his Amendment No. 680, to make the bill inapplicable to "homes, churches, cemeteries or to private clubs of any kind or to fraternities or other organizations of any kind membership in which is selective." He modified his proposal, in view of the adoption of the Long amendment, to strike therefrom

the words "or to private clubs of any kind" (110 Cong. Rec. 13697).

After mentioning homes, churches and cemeteries, Senator Hill continued (*id.* at 13697-13698):

"As to fraternities, does any Senator believe that the Federal Government should intrude upon or interfere with the membership of the fraternity, whether Masonic, Knights of Columbus, Knights of Pythias, or any other fraternal order. That is what this amendment would do, protect the fraternity from any such aggression or intrusion on the part of the Government.

"This is the purpose of my amendment. Where we have privacy, where we have sanctity, where we have sacredness today, this amendment would insure that the privacy, the sanctity, and the sacredness would be honored and would be observed and there could be and would be no Government interference or intrusion."

Senator Hart objected (p. 13698):

"Section 202 prescribes discrimination or segregation if it is required by a State or local law. Amendment No. 680 would specifically exclude the following from the application of section 202: homes, churches, cemeteries, private clubs, fraternities and organizations of any kind, membership in which is selective.

"Since, so far as appears, there are no State or local laws requiring segregation in places enumerated in amendment No. 680, the amendment would seem to have no practical effect. At any rate, such laws would obviously be unconstitutional.

"Presumably, amendment No. 680 is intended primarily as a congressional expression favorable to the maintenance of segregation in all of the

places to which it would apply. If the amendment were adopted, some State and local legislative bodies might enact laws requiring discrimination in these places if only to have legislation on the books reflecting a segregationist public policy. With justification, they could point to this amendment as support for such legislation.

"Clearly, therefore, this amendment should be rejected."

On a roll-call vote, the Hill amendment was rejected, 26-58 (*ibid.*).

Thereafter Section 201(e) of the Civil Rights Act of 1964 was not further changed, and it became law with the modification that the Long amendment involved.

The foregoing summary of the legislative history of the private club exemption in § 201(e) establishes in our view three significant points.

First, Congress established that exemption with a minimum of debate and obviously universal acceptance.

Second, Congress drew a line, easily susceptible of ascertainment by objective standards, to mark the boundary between the constitutionally protected right of freedom of private association on the one hand and the right to be free from discriminatory state action on the other.

Third, in fixing that boundary, the Congress responded to the invitation earlier extended by some members of this Court (*Bell v. Maryland*, 378 U.S. 226, 317):

"In the give-and-take of the legislative process, Congress can fashion a law drawing the guidelines necessary and appropriate to facilitate practical



administration and to distinguish between genuinely public and private accommodations. In contrast, we can pass only on justiciable issues coming here on a case-to-case basis."

**B. THE FOREGOING GUIDELINE SHOULD BE GIVEN THE SAME EFFECT AS OTHER CONGRESSIONAL ENACTMENTS ENFORCING THE CIVIL-WAR AMENDMENTS.**

Congress enacted the Civil Rights Act of 1964 in response to President Kennedy's urging that it "assert its specific constitutional authority to implement the 14th amendment" (H.R. Doc. 124, 8th Cong., 1st sess., p. 6), that authority being Section 5 of the same amendment, declaring (*supra*, p. 4) that "The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

Accordingly, this Court has consistently supported every Congressional determination in the civil rights enforcement area—and we cite cases from all three post-Civil War Amendments interchangeably, since all three have virtually identical enforcement provisions. *South Carolina v. Katzenbach*, 383 U.S. 301; *Katzenbach v. Morgan*, 384 U.S. 641; *Cardona v. Power*, 384 U.S. 672; *Jones v. Mayer Co.*, 392 U.S. 409; *Gaston County v. United States*, 395 U.S. 285; *Perkins v. Matthews*, 400 U.S. 379; cf. *Oregon v. Mitchell*, 400 U.S. 112.<sup>8</sup>

Briefly to summarize those recent landmarks, in *South Carolina v. Katzenbach*, 383 U.S. 301, the Court sustained the provisions of the Voting Rights Act of 1965 that establish elaborate Federal machinery to

<sup>8</sup> Thirteenth Amendment, Section 2: "Congress shall have power to enforce this article by appropriate legislation."

Fifteenth Amendment, Section 2: "The Congress shall have power to enforce this article by appropriate legislation."

strike down discriminatory voting practices, machinery resting on formulas too detailed to permit of summary here; in *Katzenbach v. Morgan*, 384 U.S. 641, the Court sustained other provisions of the same Act, overriding a state statute requiring literacy in the English language as a prerequisite to voting, and followed that decision in *Cardona v. Power*, 384 U.S. 672; in *Jones v. Mayer Co.*, 392 U.S. 409, the Court held that under the Thirteenth Amendment (which unlike the Fourteenth is not limited to state action) Congress could provide in 42 U.S.C. § 1982 that private individuals could not refuse to sell a house on the sole ground that the purchaser is a Negro; in *Gaston County v. United States*, 395 U.S. 285, the Court sustained still another portion of the Voting Rights Act of 1965 that suspended enforcement of a state literacy test because of prior educational discrimination; in *Perkins v. Matthews*, 400 U.S. 379, the Court sustained yet another provision of the Voting Rights Act of 1965, which had the effect of setting aside a municipal election because of changes in election procedures; while in *Oregon v. Mitchell*, 400 U.S. 112, the Court sustained the power of Congress to lower the voting age in Federal elections while denying Congress such power in respect of state elections.<sup>9</sup>

We have brushed over the particulars of those decisions because of the overriding significance of the principle that they illustrate: The power of Congress under the enforcement provisions of the Civil War Amendments is plenary, quite as full indeed as its power under the Necessary and Proper Clause, and the test is not whether Congress was wise or unwise, not whether

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<sup>9</sup> See also *Griffin v. Breckenridge*, No. 144, decided on June 7, 1971, which sustained 42 U.S.C. § 1985(3) as appropriate action to enforce the Thirteenth Amendment.

more or less should have been legislated, but simply whether, fairly construed, what was enacted was reasonably appropriate. The test, in short, is that laid down by the Great Chief Justice more than a century and a half ago (*M'Culloch v. Maryland*, 4 Wheat. 316, 421):

"Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional."

Here the end is indeed appropriate, because Congress is drawing a line between competing considerations, the right of some citizens to be free to associate with only those with whom they desire to associate on private premises not offered for public accommodation, and the countervailing right of other citizens to be free from discriminatory state action. That line, which excepts "a private club or other establishment not in fact open to the public" from the operation of Title II of the Civil Rights Act of 1964, actually gives full effect to both sides of constitutionally protected liberties.

There is no question here of granting Congress power to restrict, abrogate, or dilute the guarantees of equal protection and of due process. Cf. *Katzenbach v. Morgan*, 384 U.S. 641, 651 n. 10, 668. Here the substantive guarantees of the Fourteenth Amendment are neither diluted nor denied, first because Section 201(e), by giving effect to the constitutionally protected liberties of privacy and private association, actually enforces First Amendment rights; and, second because, as we have shown in Point IV, *supra*, pp. 59-85, there

is here no state action—at which of course the Fourteenth Amendment is alone directed.

Thus, bearing in mind that the Fourteenth Amendment has long since been deemed to incorporate the First (e.g., *Gitlow v. New York*, 268 U.S. 652; *Stromberg v. California*, 283 U.S. 359; *DeJonge v. Oregon*, 299 U.S. 353; *Hague v. CIO*, 307 U.S. 496), Congress by enacting Section 201(e) has given full effect to all aspects of the Fourteenth Amendment.

The ready acceptance of Section 201(e) by all concerned, in a series of debates prior to enactment whose length and thoroughness have been equalled in few if any instances in recent history, reflects a well-nigh universal consensus in support of the legislative determination. For the Court now to accord deference to what Congress said in this area accordingly involves not only respect to a coordinate branch of the government, but recognition as well of a virtually unanimous understanding.

That understanding is emphasized by the circumstance that many state civil rights laws similarly exempt private clubs, some impliedly because they deal in terms with *public* accommodations, some specifically: According to a recent study, sixteen of these state enactments expressly exempt private clubs. See 54 Geo. L.J. 915, 922-923, 939 (1966).

And, as the numerous cases cited by us at pp. 54-55, above, show, the problems encountered in administering the state-private club exception are identical with those arising in judicial interpretation of Section 201(e). That is why we cited there both sets of decisions without differentiation.

Actually, even to speak of "problems" is to inflate unduly what several years of litigating experience have shown to be no problem at all. That is because the ascertainment of whether a given undertaking is or is not "a private club or other establishment not in fact open to the public" is a purely factual inquiry, far easier of determination than at least three-quarters of the normal grist that falls to trial courts every day.

Consequently, by accepting the demarcation since drawn by Congress, the Court will be enabled to assure a resolution between competing constitutional claims that is workable, that is perfectly clear, that in consequence will not spawn a new and further litigation explosion, and that gives full effect to both sets of contentions in the traditional manner of reading together every provision of our fundamental law.

It bears reiteration that, as is shown in full detail in part B of the Statement (*supra*, pp. 12-15), the completely private nature of Moose Lodge No. 107 was stipulated by the parties, recognized by the court below, and once again admitted by the appellee Irvis here (Motion to Affirm 8): "Appellant is a private club."

Indeed, insofar as the Moose Lodge's activities extend to catering, they comply with the second clause of Section 201(e), viz., "except to the extent that the facilities of such establishment are made available to customers or patrons of an establishment within the scope of subsection (b)," the general enforcement provision. For, the parties have stipulated, when the Moose Lodge engages in catering, it "imposes no restrictions on the race or color of persons belonging to the outside group so using its facilities" (Stip., ¶ 6, A. 25).



This interpretation is in exact accord with the views expressed by the Senate supporters of the Act (*supra*, pp. 89-94).

**C. THE PROVISIONS OF THE CIVIL RIGHTS ACT OF 1964 THAT PROHIBIT DISCRIMINATION ON THE FOUR STATED GROUNDS OF "RACE, COLOR, RELIGION OR NATIONAL ORIGIN" EMPHASIZE IN STILL ANOTHER ASPECT THE UNTENABILITY OF THE DISTRICT COURT'S DISTINCTION BETWEEN A PRIVATE CLUB'S MEMBERSHIP RESTRICTIONS THAT ARE RACIAL AND THOSE THAT ARE RELIGIOUS OR ETHNIC.**

The Congressional standard for equal treatment, set forth no less than eight times, in four titles of the Civil Rights Act of 1964, forbids discrimination on four stated grounds: "race, color, religion or national origin." See Sections 201(a), 202, 301(a), 401(b), 402, 407(a)(2), 410, and 504(a), the last cited amending three subdivisions of § 104(a) of the Civil Rights Act of 1957; for the codified references, see 42 U.S.C. §§ 2000a(a), 2000a-1, 2000b(a), 2000c(b), 2000c-1 [listed but not codified], 2000c-6(a)(2), 2000c-9, 1975c(a)(1)-(3).

"Sex" was named in Title VII, Equal Employment Opportunity, as an additional area of forbidden discrimination. See Section 703 (eight subdivisions) and § 704(b)(2); the codified references are 42 U.S.C. §§ 2000e-2 and 2000e-3(b); see *Phillips v. Martin Marietta Corp.*, 400 U.S. 542.

"Religion" as an improper differentiation was omitted in Section 601 (42 U.S.C. §§ 2000d), an omission of course reflecting only the parochial school and sectarian college problem. Cf. *Flast v. Cohen*, 392 U.S. 83; *Board of Education v. Allen*, 392 U.S. 236; *Pierce v. Society of Sisters*, 268 U.S. 510.

Finally Section 801 (42 U.S.C. § 2000f), prescribing the duty of the Secretary of Commerce to conduct "a

survey to compile registration and voting statistics in such geographic areas as may be recommended by the Commission on Civil Rights," though it similarly omits "religion," adds as forbidden subjects of inquiry "his political party affiliation, how he voted, or the reasons therefor."

Yet despite these readily accessible indicia of Congressional enforcement of the Fourteenth Amendment, the court below, without once speaking of or even intimating reliance on the statutory omissions that seek an adjustment in respect of sectarian education, found a distinction between racial and religious or ethnic discrimination in a wholly secular fraternal body, striking down the first but supporting the latter two (A. 40).

Once again, though in a different context and on a different approach, the untenability of that distinction is starkly demonstrated by the terms of the Civil Rights Act of 1964.

We are not unaware, of course, of the recent Maine statute, which, though nowhere cited by the district court, anticipated the identical distinction that was made below. The operative part of Chapter 371, Maine Laws of 1969, provides as follows:

"No person, firm or corporation holding a license under the State of Maine or any of its subdivisions for the dispensing of food, liquor or for any service or being a State of Maine corporation or a corporation authorized to do business in the State shall withhold membership, its facilities or services to any person on account of race, religion or national origin, except such organizations which are oriented to a particular religion or which are ethnic in character."

It seems sufficient at this juncture simply to remark that, in the light of the several considerations already

canvassed in the earlier portions of the present brief, the quoted statute bristles with constitutional problems right on its face. But it will be time to discuss those problems—and the infirmities to which they give rise—if and when they are presented here in actual litigation.

**D. ANY GENUINELY PRIVATE ORGANIZATION IS, IN RESPECT OF THE CHARACTER OF ITS MEMBERSHIP, BEYOND THE POWER OF GOVERNMENT TO REGULATE.**

When Congress enacted the provisions directed at "Discrimination in Places of Public Accommodation," contained in Title II of the Civil Rights Act of 1964, and excepted from those provisions "a private club or other establishment not in fact open to the public," it was giving effect to the constitutionally protected liberties of privacy and private association that are inherent in the right of every individual to express his likes, his dislikes, his prejudices, and his after-judgments by joining a private club composed of like-minded persons.

Not only that, but in thus drawing the line, Congress very properly stopped short of finding state action in a situation where, both conceptually as well as realistically, no arm of the state in fact participated.

The obvious way for this Court to give full effect not only to the reach of the First Amendment but also to the limitations of the Fourteenth is to respect and reaffirm the Congressionally drawn boundary between those apparently conflicting constitutional rights—a step that, necessarily, requires reversal of the judgment below.

We conclude with a formulation of the constitutionally guaranteed right to privacy and to private association inherent in club membership, one expressing the view that, so far as the character of its membership is concerned, every genuinely private organization is to

that extent beyond the reach of governmental regulation. That formulation is not "authority" here, since it is not only the expression of a single District Judge but is dictum as well, inasmuch as the club there under consideration was held to be, in fact, a place of public accommodation. But the basic constitutional principle was there so fully and so convincingly delineated that we adopt it here as our own—and of course it would be indefensible plagiarism were we to set it forth without attribution.

Judge Singleton of the Southern District of Texas said in *Wright v. Cork Club*, 315 F. Supp. 1143, 1156-1157:

"In conclusion, to make it perfectly clear, the Court wishes to reiterate that any truly private organization or association, such as a country club, a social club, a business partnership, or a political association would be beyond the bounds of government regulation with regard to membership. More often than not the resolution of constitutional disputes is accomplished, not by the application of absolute rules, but by a balancing process. The cause of racial integration is a laudable one indeed. But to allow the government to intrude into the essentially private affairs of men, even in the name of integration, would work a greater injustice to all citizens, no matter what may be their race, creed, or religion.

"To allow such a governmental intrusion would violate not only the First Amendment, but the very essence of the Bill of Rights. The Bill of Rights stands for the proposition that there are bounds beyond which the government cannot go in interfering with individual rights. The Supreme Court in numerous past decisions has drawn the lines establishing the metes and bounds of governmental authority. [Citing *Griswold v. Connecticut*, 381 U.S. 479, for privacy of marriage; *Katz v.*



*United States*, 389 U.S. 347, for privacy of conversations; *Mapp v. Ohio*, 367 U.S. 643, for privacy of home; and *NAACP v. Alabama*, 357 U.S. 449, for privacy of association.] Foremost among the protected areas is the privacy of the individual, in his home, in his private associations, and even in the very words which he utters in private. The Bill of Rights, though it does not say it in so many words, guarantees to every individual the basic right of privacy. In essence, when the courts protect the individual from governmental interference with his right of assembly or freedom of speech and press, protect him from unreasonable searches and seizures, or from being forced to incriminate himself, they are protecting his integrity and privacy as an individual. Underlying the specific guarantees of the Bill of Rights is a basic concern for the integrity and privacy of the individual.

[After quoting from *Griswold v. Connecticut*, 381 U.S. 479, 483:]

"Thus, before Title II of the Civil Rights Act can be applied to a so-called 'private club,' a Court must determine, as this Court has done, that the organization is not in fact a private club. In this Court's view, governmental regulation of the membership of private clubs is beyond the pale of governmental authority. If the government were allowed to regulate the membership of truly private clubs, private organizations, or private associations, then it could determine for each citizen who would be his personal friends and what would be his private associations, and the Bill of Rights would be for naught."

It is not without significance that similar formulations have been made by members of this Court (*Bell v. Maryland*, 378 U.S. 226, 313, quoted at p. 45, *supra*; *Gibson v. Florida Legislative Comm.*, 372 U.S. 539, 565, 570, 575-576, quoted at pp. 49-50, *supra*).



## CONCLUSION

The judgment below is palpably erroneous and must be reversed.

If the Court is of opinion that the appellee Irvis has lost standing to sue by reason of rejecting the only form of decree that would have given him personal redress, then such reversal should include a direction to dismiss the complaint for lack of Article III jurisdiction, since it now appears that no Case or Controversy presently exists.

If however the Court is of opinion that jurisdiction was not lost, then such direction to dismiss should rest on the failure of the complaint to state a claim on which relief could be granted.

Respectfully submitted.

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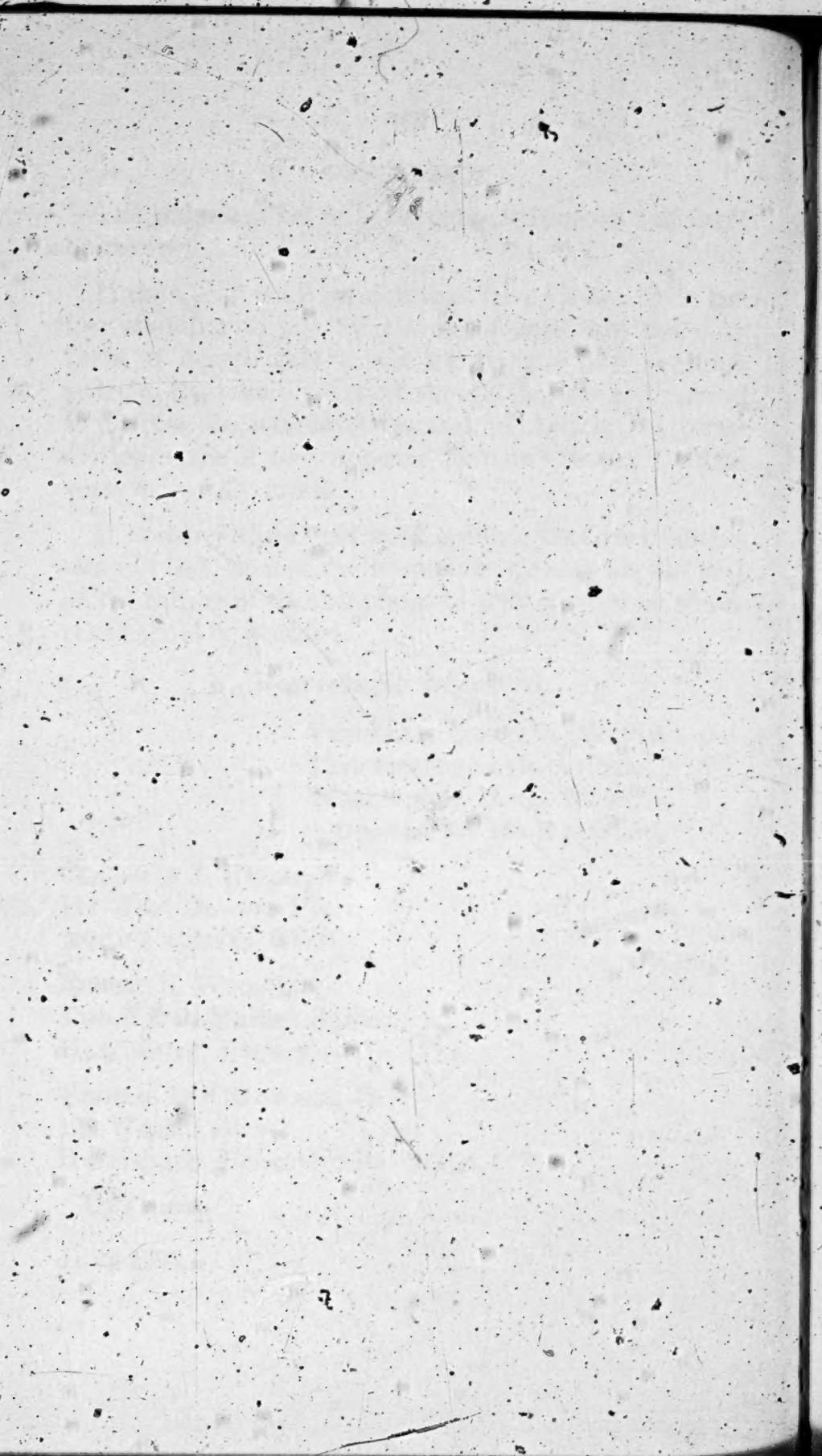
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JUNE 1971.





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E. ROBERT SEAYER,

IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1971

**No. 70-75**

**MOOSE LODGE No. 107, Appellant,**

**v.**

**K. LEROY IRVIS, et als.**

**On Appeal from the United States District Court for the  
Middle District of Pennsylvania**

**APPELLANT'S MEMORANDUM IN CONNECTION WITH  
MOTION OF AMERICAN JEWISH COMMITTEE ET AL.  
FOR LEAVE TO FILE A BRIEF AMICI CURIAE**

This Court's Rule 42(3) requires among other things that a motion for leave to file a brief *amicus curiae* shall "set forth facts or questions of law that have not been, or reasons for believing that they will not adequately be, presented by the parties."

Examination of the motion for leave to file a brief *amici curiae* in the present case, submitted on behalf of



American Jewish Committee, American Jewish Congress, and Anti-Defamation League of B'nai B'rith, as well as of the brief *amici curiae* attached to that motion, which seeks affirmance of the judgment below, discloses an utter failure to comply with the foregoing rule. It was for this reason alone that request for leave to file was in May 1971 refused these movants by appellant Moose Lodge.

In the instant motion, filed in July 1971, counsel for the prospective *amici curiae* still have not made the slightest showing that the appellee Irvis, the only actual party to this cause who is presently supporting the judgment appealed from, has up to now failed or will hereafter fail to adduce a single one of the legal or factual matters that they now advance.

Contrariwise, counsel for the prospective *amici curiae*, who propose to launch an attack (Motion, p. 2) on "the ultimate bastions of privilege—the private clubs," never once cite, much less discuss, the Congressional exemption for such clubs that is contained in Section 201(e) of the Civil Rights Act of 1964 (42 U.S.C. §.2000a(e)). That subsection expressly provides that the provisions of Title II of the Act ("Injunctive Relief against Discrimination in Places of Public Accommodation")—

"shall not apply to a private club or other establishment not in fact open to the public, except to the extent that the facilities of such establishment are made available to the customers or patrons of an establishment within the scope of subsection (b)."

Consequently counsel for the prospective *amici curiae* never once address themselves to one of the appellant Moose Lodge's major arguments (Point V,



M.L. Br. 86-107), to the effect that "The Congressional exception for 'a private club or other establishment not in fact open to the public' marks a proper boundary between the competing constitutionally protected liberties of privacy and private association on the one hand and of freedom from discriminatory state action on the other, and that boundary should be respected and reaffirmed here."

Otherwise stated, counsel for the prospective *amici curiae* deliberately shut their eyes to the fact that Congress, without a single whisper to the contrary (M. L. Br. 87-98), undertook to preserve unimpaired those very "ultimate bastions of privilege—the private clubs" that counsel now so strenuously assail.

This memorandum has been filed because we deem it our duty as officers of the Court to call attention both to the violation of the Rules that the present motion involves, as well as to the uncandid and in consequence thoroughly unhelpful propaganda brief which that motion seeks to inflict on the Court.

Respectfully submitted.

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AUGUST 1971.

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E. ROBERT SEAVER, CLERK

IN THE  
**Supreme Court of the United States**

October Term, 1971

No. 70-75

MOOSE LODGE No. 107,

*Appellant,*

v.

K. LEROY IRVIS, *et. als.*

ON APPEAL FROM THE UNITED STATES  
DISTRICT COURT FOR THE MIDDLE  
DISTRICT OF PENNSYLVANIA

MOTION OF WASHINGTON STATE FEDERATION OF  
FRATERNAL, PATRIOTIC, CITY AND COUNTRY  
CLUBS FOR LEAVE TO FILE BRIEF AS AMICUS  
CURIAE AND BRIEF OF AMICUS CURIAE

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IN THE  
Supreme Court of the United States

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October Term, 1971

No. 70-75

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MOOSE LODGE No. 107,  
*Appellant,*

v.

K. LEROY IRVIS, *et als.*

---

ON APPEAL FROM THE UNITED STATES  
DISTRICT COURT FOR THE MIDDLE  
DISTRICT OF PENNSYLVANIA

---

MOTION OF WASHINGTON STATE FEDERATION OF  
FRATERNAL, PATRIOTIC, CITY AND COUNTRY  
CLUBS FOR LEAVE TO FILE BRIEF AS AMICUS  
CURIAE AND BRIEF OF AMICUS CURIAE

---

ARGUMENT IN SUPPORT OF MOTION

The Washington State Federation of Fraternal, Patriotic, City and Country Clubs, a Washington non-profit corporation, moves the Court for leave to file a brief *amicus curiae* directed to the fundamental legal issues not adequately raised by the Petition for Review and requesting the Court to limit the consideration of the constitutional issues presented to the law of the particular case. In support of this motion the Federation shows the Court as follows:



1. The Washington State Federation of Fraternal, Patriotic, City and Country Clubs includes approximately eighty fraternal lodges and an equal number of non-fraternal clubs, including athletic clubs, yacht clubs, golf and country clubs, veterans clubs, social clubs, and other clubs formed for specific private purposes. Although most of the non-fraternal clubs have no by-law provisions restricting membership on the basis of race, creed or national origin, many of these clubs would come within the broad language of the decree of the district court under review.

2. The Federation is an intervenor in *Gerber v. Hood*, Civil No. 7701, W.D. Wash., N. Div.; presently pending before a three-judge district court, wherein various plaintiffs seek to enjoin the Washington State Liquor Control Board from issuing liquor licenses to any private club engaging in discriminatory acts on the basis of race, religion, and national origin, and to require the Board to revoke all licenses already issued to such organizations—whether the discrimination results from restrictive membership clauses or whether the private clubs discriminate by personal choice of the members without restrictions in their constitutions or by-laws.

3. Consent to the filing of a brief *amicus curiae* has been granted by Appellant, but has not been granted by Appellee. This motion seeks permission to address the Court in support of neither party, but to address constitutional issues not raised by Appellant or Appellee.

4. The motion is made because the legal issues raised are not considered adequately addressed to the facts of the case, and because petitioner believes the questions of law will not be adequately presented to the Court, in particular the following:

*First.* No issue has been made over the breadth of the lower court decree. The district court had no jurisdiction to rule on membership practices since no case or controversy was presented regarding membership. The facts of the case involve only the rejection of a single guest, yet the decree of the district court would bar restrictive membership clauses and all discriminatory membership policies and practices, in addition to restrictive guest policies. The Court should not grant an advisory opinion on issues of such fundamental importance which the facts before it do not demand.

*Second.* The questions presented by Appellant do not raise specifically the issue of free speech and association, yet the entire crux of the case presented to the Court is whether an individual is free to limit those with whom he associates under the First Amendment and, if so, whether the state may be required to apply its liquor licensing laws so as to compel a private group to change its philosophy of association. In view of the First Amendment right, repeatedly noted by this Court, to enjoy freedom of speech and association for whatever private purposes, however unorthodox, controversial or even repulsive, Appellant's members without doubt have free choice in the matter. This is conceded by Irvis.

However, without considering whether these First Amendment freedoms can be so limited, Irvis argues that the equal protection clause of the 14th Amendment requires the state to withhold a liquor license because of the beliefs and organizational purposes of the individual licensee. The mandate of the equal protection clause is that the state cannot do precisely what Irvis demands: it cannot pick and choose among applicants upon the basis of their beliefs and philosophy and must grant licenses

equally to all persons regardless of their race, creed or beliefs. Attributing the purposes of the licensee to the state would deny the equal protection of the law to those who seek to exercise their First Amendment rights by limiting those with whom they associate.

*Third.* Both parties would permit resolution of the issues presented on an unnecessarily broad constitutional basis, and ask the Court to ignore the actual issues presented by the facts. Irvis urges the Court to extend the concept of state action beyond constitutional limits. Appellant would have the Court gratuitously define the limits of state action in the context of private clubs by looking to the Congressional legislative history of the Civil Rights Act. Totally ignored is the fact that redress of the alleged injury was available to Irvis in tort. His claim, originally pursued as a violation of the Pennsylvania public accommodation statute, was abandoned. The logical basis for resolving the question of possible injury to the plaintiff has thus been avoided, and thrust upon the Court are novel constitutional propositions of extremely broad scope in a fact setting which should not have permitted their presentation.

Respectfully submitted,

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**IN THE  
Supreme Court of the United States**

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**October Term, 1971**

**No. 70-75**

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**MOOSE LODGE No. 107,  
*Appellant,***

**v.**

**K. LEROY IRVIS, and WILLIAM Z. SCOTT, Chairman, EDWIN  
WINNER, Member, and GEORGE R. BORTZ, Member,  
LIQUOR CONTROL BOARD, COMMONWEALTH OF  
PENNSYLVANIA**

---

**APPEAL FROM THE UNITED STATES DISTRICT  
COURT FOR THE MIDDLE DISTRICT OF  
PENNSYLVANIA.**

---

**BRIEF ON BEHALF OF WASHINGTON STATE  
FEDERATION OF CLUBS AS AMICUS CURIAE**

---

- 1. Since No Case or Controversy Was Presented to the District Court Regarding Membership, the Injunctive Decree Exceeded the Court's Jurisdiction by Prohibiting Restrictive Membership Clauses and Discriminatory Membership Policies and Practices**

As the case is presented to the Court apparently both parties seek an advisory opinion. No issue has been presented regarding the restriction of membership. Irvis never applied for membership in Moose Lodge No. 107, and was never denied membership. He was simply denied service

by the club while a guest of a member. Yet the district court's opinion, and the various briefs, have examined in detail the specific *membership* provisions of the Lodge, and the district court found the lodge maintained a "policy and practice of restricting membership to the caucasian race". Petition for Review A3.

In its decree, the district court ordered that the Pennsylvania Liquor Control Board be permanently enjoined from issuing a liquor license to the lodge "as long as it follows a policy of racial discrimination in its membership or operating policies or practices." The district court's decree goes far beyond the case and controversy presented by prohibiting enforcement of the Lodge's restrictive membership provisions and by ordering that the Lodge's license be revoked so long as any policy or practice established by the Lodge members results in discrimination of any kind.

Evidently the parties desire a sweeping opinion by this Court on the entire subject of club discrimination. Neither party has examined the fundamental jurisdictional question of the breadth of the lower court decree. Yet any decision by this court approving the lower court decree would have great impact on any future case involving membership restrictions. In particular, it would affect several cases wherein these various issues have been raised. One is *Gerber v. Hood*, Civil No. 7701, W.D. Wash. N.D., presently pending before a three-judge federal court.

*Gerber v. Hood* is a class action commenced by several plaintiffs seeking to enjoin the Washington State Liquor Control Board from issuing liquor licenses to private clubs allegedly discriminating on the basis of race, religion and national origin, and seeking to require the Liquor Control



Board to revoke all licenses previously issued to such organizations. The Washington Federation of Fraternal, Patriotic, City and Country Clubs, a Washington non-profit corporation, intervened in the action on behalf of the various private clubs in the State of Washington. Intervention was permitted because the relief sought would require revocation of all liquor licenses from clubs which had restrictive membership clauses as well as clubs which discriminated by personal choice of the members without specific restriction in their constitutions or by-laws.

The Federation includes among its members approximately eighty fraternal lodges<sup>1</sup> and approximately eighty non-fraternal clubs, including athletic clubs, yacht clubs, golf and country clubs, veterans clubs, social clubs, and miscellaneous other clubs formed for specific private purposes.

Each of the fraternal organizations have constitutional or by-law restrictions regarding membership—typically that the member must be a citizen, 21 years of age, of good moral character, a member of the white or caucasian race,<sup>2</sup> and believe in a Supreme Being.

Approximately 10% of the non-fraternal clubs in the Federation have some form of membership restriction, most common being those of a religious nature and restrictions relating to national origin in clubs where the purpose of the club is related to persons of a common heritage. Racially restrictive clauses, while at one time gen-

1. The Benevolent and Protective Order of Elks, Loyal Order of Moose and Fraternal Order of Eagles all have local lodges which are members of the Federation; these fraternal organizations are separately represented in the action.

2. The Fraternal Order of Eagles does not have the requirement that members be of the white or caucasian race.

erally thought to be common in social clubs, golf and country clubs and many other private clubs, are rare.

However, the overwhelming majority of all of the private clubs claim the right to determine the character of the club membership based upon the attitudes and personal choice of the club members. Necessarily, this choice depends upon the character of the particular club. Likewise, membership policies vary from time to time depending upon the changing attitudes of the members. Also, membership attitudes may depend somewhat on the geographical area in which the club is located.

However, no issue as to membership restriction has been raised in the present case, and it is urged that the Court should limit its consideration to the controversy at hand. It should be obvious that hundreds of private clubs throughout the country would be affected by a broad, sweeping opinion of this Court directed toward discriminatory policies or practices in club membership.

The Court is urged to follow its long-standing practice of limiting its decision to the facts of the case, and not to render an advisory opinion on the broad subject of membership policies of private clubs and fraternal organizations.

## **II. The Fundamental Question Presented is Whether a Federal Court Can Constitutionally Require a State to Apply Its Liquor Laws so as to Compel a Private Group to Change its Philosophy of Association as a Prerequisite to Licensing**

This Court has repeatedly held that the 1st Amendment applies to rights of association and that the members of a private group may collectively enjoy freedom of speech and association—however unorthodox, controversial or

reprehensible may be their private purposes for associating. *NAACP v. Button*, 371 U.S. 415 (1963); *Bates v. Little Rock*, 361 U.S. 516 (1960); *NAACP v. Alabama*, 357 U.S. 449 (1958); *Thomas v. Collins*, 323 U.S. 516 (1945); *DeJonge v. Oregon*, 299 U.S. 353. (1937).

The right of Moose Lodge No. 107 to choose its own members and to enjoy the private right of free association is conceded by appellee. Motion to Affirm 8.

The state cannot limit these rights, directly or indirectly, unless the regulation bears a reasonable relationship to the governmental purpose to be achieved. *Bates v. Little Rock*, 361 U.S. 516, (1960); *Elfbrandt v. Russell*, 384 U.S. 11<sup>r</sup> (1966). Thus, in order for the State of Pennsylvania through its liquor licensing laws to regulate the manner in which Moose Lodge No. 107 is organized or the manner in which its guest policies are implemented, there must be a strong showing that these limitations are reasonably related to regulation of the sale of liquor. However, without so much as suggesting how the freedom of association could be so limited under the circumstances, Irvis seeks to demonstrate that the equal protection clause of the 14th Amendment requires the state to regulate the organizational policies of private clubs and fraternal lodges, even though the 1st Amendment freedoms would prevent state interference in these same matters.

Quite aside from the rights protected under the 1st Amendment, the equal protection clause does not sustain the theory propounded by Irvis. He argues that the 14th Amendment requires the state to withhold liquor licenses because of the organizational tenets of the individual licensee. However, the equal protection clause prohibits a state from discriminating on this basis between persons

and classes of persons in the application of its laws, and thus a state is compelled to grant licenses equally to all persons regardless of their beliefs.<sup>2</sup> *NAACP v. Button*, 371 U.S. 415, 444 (1963). The state cannot pick and choose between applicants upon the basis of their beliefs and philosophy, and it could not therefore constitutionally discriminate between private clubs and fraternal lodges on the basis of the particular purpose or philosophy of an individual club. If it grants licenses to some clubs, it must grant equal rights to licenses to all clubs.

Irvis apparently argues that the state must take cognizance of the purposes and conduct of each licensee, and thereby apparently attributes the philosophy and purpose of individual licensees to the state itself. But this reasoning, if accepted, would result in denial of the equal protection of the laws to those licensees who desire to exercise their 1st Amendment rights by excluding certain persons, or restricting membership in compliance with their particular group philosophy.<sup>1</sup>

### **III. The Proper Remedy for the Alleged Injury Sustained by Irvis was in Tort, Under Either State Law or Federal Law**

It is interesting to note that Irvis initially raised his claim before the Pennsylvania Human Relations Commission, which upheld his complaint as a violation of the public accommodation section of the 1961 Pennsylvania Human Relations Act.<sup>2</sup> On appeal to the Court of Common

1. In Appellant's Brief, repeated reference is made to competing constitutional rights between 1st Amendment rights of free speech and association on one hand and freedom from discriminatory state action on the other. It seems clear that since the equal protection clause has not been violated, Appellant's 1st Amendment rights have primacy.

2. Act of February 28, 1961, P.L. 47, 43 Purdon's Pa. Stat. Annot. §§951 *et seq.* Printed in Appendix.

Pleas of Dauphin County the commission was reversed on the public accommodation theory<sup>3</sup>, and apparently Irvis did not further appeal in state court. Instead, the thrust of his claim was shifted to an allegation that state action denied him of his privileges and immunities under the equal protection clause of the 14th Amendment. Irvis thus switched from a claim that he was injured by the lodge to a claim that the State of Pennsylvania had injured him by issuance of the liquor license.

As pointed out above, it is illogical to attribute the attitudes and purposes of the club to those of the state in the exercise of its police power; but it would be even more unfortunate to create in Irvis a novel constitutional cause of action which would permit him to compel withdrawal of liquor licenses from clubs merely because a particular licensee may have injured him or may in the future injure him.

No one has suggested that a guest cannot recover against a member of a private club, or against the club itself, for negligence or intentional tortious conduct resulting in injury. Certainly, if a guest sustains physical personal injury while in a club, or if a cause of action for defamation arises within the confines of a club, the injured guest could recover. Thus, the manner in which Irvis was refused service in the lodge after being invited as a guest might have constituted actionable defamation.

Moreover, were it to be shown that the facilities were open to the public—not shown to be the case here—injury resulting from an act of racial discrimination alone would constitute actionable tort under both state law and the

---

3. *Commonwealth v. Loyal Order of Moose*, 92 Dauph. 234 (1970)



Federal Civil Rights Act.<sup>4</sup> Most states have public accommodation laws protecting a member of the public from the humiliation of overt racial discrimination.<sup>5</sup> In both Pennsylvania and Washington, there are both criminal sanctions for illegal discrimination<sup>6</sup> and civil rights and remedies created under the laws against discrimination.<sup>7</sup> Typically, these public accommodation laws apply to private clubs or private establishments only to the extent that the facilities are made available to the public.<sup>8</sup> For example, where a club may be open to the public for a period of time, or where one portion of a club may be open for certain purposes to the public, the public accommodation laws may apply to such public use to permit recovery for discrimination.<sup>9</sup> Appellant in fact admits that to the extent its facilities are open to the public, it does admit and serve all persons regardless of race. (Stip. ¶6, A. 25, 53).

Since the facts upon which a tort action may have been founded are not before the Court, such discussion is speculation. However, the essential point is that Irvis was not without legal rights or means of legal redress for whatever injury he may have sustained. His attempt, therefore, to convert an action for personal injury into a cause of action of such incredible sweep should be scrutinized carefully. The Court should not limit the well established freedom

4. Civil Rights Act of 1964, 78 Stat. 243, USC, §§ 2000(a) and (2)(b). Printed in Appendix.

5. Public accommodation laws have been enacted by thirty-five states and the District of Columbia. Note, Public Accommodations Laws and the Private Club, 54 Geo. L.J. 915.

6. RCW 9.91.010; 18 Purdon's Pa. Stat. Annot. §§ 4653, 4654.

7. RCW 49.60.215, printed in Appendix; 43 Pa. Stat. §§ 951 *et seq.*

8. See 42 USC § 2000(e); 43 Purdon's Pa. Stat. Anno. § 954; RCW 49.60.040. All are printed in Appendix.

9. In Washington, RCW 49.60.040 makes this clear. A3.

of association in order to grant unnecessary redress to one individual. To do so would be to put in the hands of any individual<sup>p</sup> the power to destroy those 1st Amendment freedoms which have always been carefully protected by this Court.

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August, 1971



## APPENDIX A

Purdon's Pa. Stat. Annot., Title 18

## § 953. Right to freedom from discrimination in employment, housing and places of public accommodation

The opportunity for an individual to obtain employment for which he is qualified, and to obtain all the accommodations, advantages, facilities and privileges of any place of public accommodation and of commercial housing without discrimination because of race, color, religious creed, ancestry, age, sex or national origin are hereby recognized as and declared to be civil rights which shall be enforceable as set forth in this act.

The opportunity for an individual to obtain all the accommodations, advantages, facilities and privileges of commercial housing without discrimination due to the sex of an individual or to the use of a guide dog because of blindness of the user is hereby recognized as and declared to be a civil right which shall be enforceable as set forth in this act.

## § 954. Definitions

As used in this act unless a different meaning clearly appears from the context:

(1) The term "place of public accommodation, resort or amusement" means any place which is open to, accepts or solicits the patronage of the general public, including but not limited to inns, taverns, roadhouses, hotels, motels, whether conducted for the entertainment of transient guests or for the accommodation of those seeking health, recreation or rest, or restaurants or eating houses, or any place where food is sold for consumption on the premises

... but shall not include any accommodations which are in their nature distinctly private.

**§ 955. Unlawful discriminatory practices**

It shall be an unlawful discriminatory practice, unless based upon a bona fide occupational qualification, or in the case of a fraternal corporation or association, unless based upon membership in such association or corporation, or except where based upon applicable security regulations established by the United States or the Commonwealth of Pennsylvania:

(i) For any person being the owner, lessee, proprietor, manager, superintendent, agent or employe of any place of public accommodation, resort or amusement to

(1) Refuse, withhold from, or deny to any person because of his race, color, religious creed, ancestry or national origin, either directly or indirectly, any of the accommodations, advantages, facilities or privileges of such place of public accommodation, resort or amusement.

**Revised Code of Washington, Title 49**

**49.60.040 Definitions. As used in this chapter:**

"Any place of public resort, accommodation, assemblage or amusement" includes, but is not limited to, any place, licensed or unlicensed, kept for gain, hire or reward, or where charges are made for admission, service, occupancy or use of any property or facilities, whether conducted for the entertainment, housing or lodging of transient guests, or for the benefit, use or accommodation of those seeking health, recreation or rest,

or where food or beverages of any kind are sold for consumption on the premises, or where public amusement,



entertainment, sports or recreation of any kind is offered with or without charge, or where medical service or care is made available, or where the public gathers, congregates, or assembles for amusement, recreation or public purposes, or public halls, public elevators and public wash-rooms of buildings and structures occupied by two or more tenants, or by the owner and one or more tenants, or any public library or educational institution, or schools of special instruction, or nursery schools, or day care centers or children's camps: *Provided*, That nothing herein contained shall be construed to include or apply to any institute, bona fide club, or place of accommodation, which is by its nature distinctly private, including fraternal organizations, though where public use is permitted that use shall be covered by this chapter; nor shall anything herein contained apply to any educational facility, columbarium, crematory, mausoleum, or cemetery operated or maintained by a bona fide religious or sectarian institution; in connection with a religious organization or any bona fide private or fraternal organization from giving preference to persons of the same religion or denomination or to members of such private or fraternal organization or from making such selection as is calculated by such organization to promote the religious principles or the aims, purposes or fraternal principles for which it is established or maintained. Nor shall it apply to the rental of rooms or apartments in a landlord occupied rooming house with a common entrance.

**49.60.215    Unfair practices of places of public resort,  
accommodation, assemblage, amusement**

It shall be an unfair practice for any person or his agent or employee to commit an act which directly or indirectly

results in any distinction, restriction, or discrimination or the requiring of any person to pay a larger sum than the uniform rates charged for other persons, or the refusing or withholding from any person the admission, patronage, custom, presence, frequenting, dwelling, staying, or lodging in any place of public resort, accommodation, assemblage, or amusement except for conditions and limitations established by law and applicable to all persons; regardless of race, creed, color, or national origin.

**United States Code Annotated, Title 42**

**§ 2000a. Prohibition against discrimination or segregation in places of public accommodation—  
Equal access**

(a) All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin.

• • •

(b) Each of the following establishments which serves the public is a place of public accommodation within the meaning of this subchapter if its operations affect commerce, or if discrimination or segregation by it is supported by State action:

• • •

(2) any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, including, but not limited to, any such facility located on the premises of any retail establishment; or any gasoline station;

• • •

**Private establishments**

(e) The provisions of this subchapter shall not apply to a private club or other establishment not in fact open to the public, except to the extent that the facilities of such establishment are made available to the customers or patrons of an establishment within the scope of subsection (b) of this section.



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SEP 13 1971

E. ROBERT SEAVER, CLERK

IN THE  
Supreme Court of the United States.

OCTOBER TERM, 1971.

No. 70-75.

MOOSE LODGE NO. 107,

*Appellant,*

*v.*

K. LEROY IRVIS, ET ALS.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA.

**OBJECTION OF APPELLEE K. LEROY IRVIS TO  
MOTION OF WASHINGTON STATE FEDERATION OF  
FRATERNAL, PATRIOTIC, CITY AND COUNTRY  
CLUBS FOR LEAVE TO FILE BRIEF  
AMICUS CURIAE.**

Rule 42(2) of this Court states that a brief *amicus curiae* in cases before the Court on the merits may be filed, if the parties consent thereto, "only . . . when . . . presented within the time allowed for the filing of the brief of the party supported."

The initial request to Appellee Irvis for consent to file a brief *amicus curiae* on behalf of the Washington State



Federation of Fraternal, Patriotic, City and Country Clubs (Federation) was made by letter from counsel for the Federation to counsel for Irvis dated August 9, 1971. This was 45 days after the date on which the brief for Appellant Moose Lodge was filed with the Court and, indeed, after the date on which Appellee Irvis' brief (due August 24, 1971) had gone to the printer. Irvis was thus effectively precluded from considering any issues or allegations made by the Federation in its brief.

Despite the ingenious statement appearing in paragraph 3 of the Federation's motion that its motion is presented in support of neither party, it is quite clear from even the most superficial perusal of its motion and brief that every word supports the position of Moose Lodge. Therefore, the last date for presentation was June 25, 1971, almost three months after the Court ordered the case set for hearing. The Federation could certainly have presented its request well within the time set by Rule 42(2).

Because of the violation of this Rule by the Federation and its accompanying effect of precluding consideration of the Federation's comments by Irvis, consent was withheld in response to the August 9 letter of the Federation's counsel. The fact is that this consent was first requested simultaneously with the filing of the motion and brief by the Federation. Therefore, the statement appearing in paragraph 3 of the motion that appellee has not granted consent was incorrect at the time it was written and can only be considered an accurate prophecy of Irvis' response.

Finally, Irvis suggests that the motion and brief do not comply with the requirements of Rule 42(3). While the Federation states in paragraph 4 of its motion that its motion is made because the legal issues will not be adequately presented to the Court, there is nothing in its subsequent three-part explanation which in any way raises a

meritorious issue not adequately presented in the brief of appellant Moose Lodge. Further, it is less than candid in its reference to the unsuccessful action taken under the Pennsylvania public accommodation statute (p. 3 of motion, pp. 10-13 of proposed brief). Irvis is not a party to that action and had no right of appeal therein.

Because of these violations of the rules of the Court, Irvis believes the Federation's motion should be denied. Had it been presented prior to June 25, 1971, Irvis would not have objected and would have been able to comment on the Federation's position in his own brief.

Respectfully submitted,

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September, 1971



AUG 19 1971

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AUG 19 1971

E. ROBERT SEAYER, CLERK

IN THE  
Supreme Court of the United States

October Term, 1971

No. 70-75

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U.S.  
OCT 12 1971  
E. ROBERT SEAYER, CLERK

ON APPEAL FROM THE UNITED STATES  
DISTRICT COURT FOR THE MIDDLE  
DISTRICT OF PENNSYLVANIA

MOTION FOR LEAVE TO FILE BRIEF  
*AMICUS CURIAE*  
and  
BRIEF FOR BENEVOLENT AND PROTECTIVE  
ORDER OF ELKS OF THE UNITED STATES  
OF AMERICA AS *AMICUS CURIAE*

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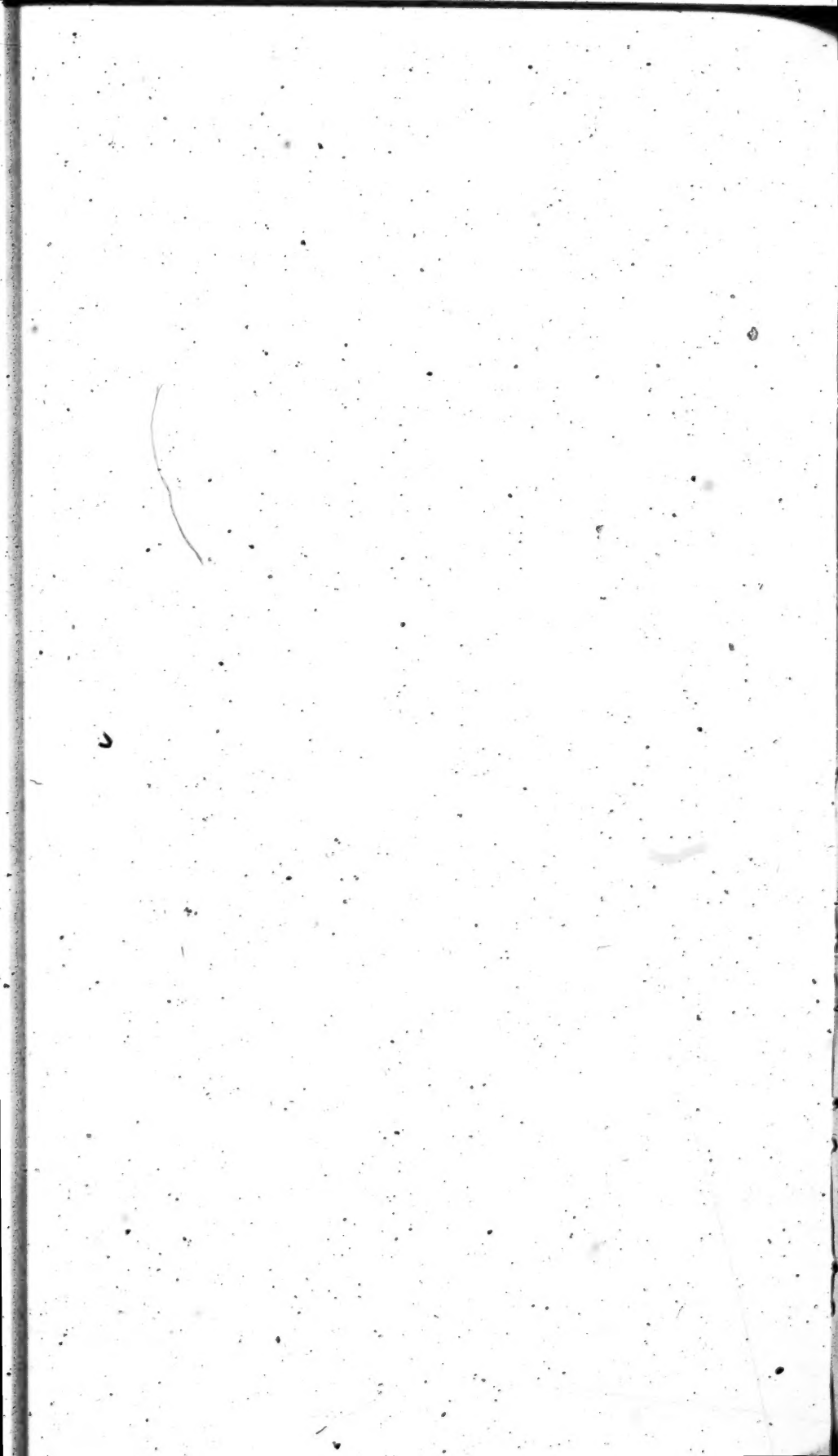
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---

ARGUMENT IN SUPPORT OF MOTION

The Benevolent and Protective Order of Elks of the United States of America hereby respectfully moves for leave to file a brief *amicus curiae* in this case in support of appellant, as provided under Rule 42, Subsection (3), of the Rules of this Court:

The consent of the attorneys for the appellant has been obtained. The consent of the attorneys for the appellee was requested, but refused.

The Benevolent and Protective Order of Elks of the



United States of America was incorporated in 1895, under appropriate sections of Federal statutes, in the District of Columbia, for benevolent, charitable, educational and literary purposes, and has continued in existence since that time. The total membership of the Order, as of March 31, 1971, was 1,520,731, with 2,164 Lodges, designated as "Subordinate Lodges", located in all of the States and in Puerto Rico, Panama Canal Zone, Guam and the Philippines.

There are 135 Subordinate Lodges in the State of Pennsylvania, with a total membership of 96,343. These Lodges, located in various cities and towns in Pennsylvania, range in size from 32 members to 2,344 members.

The basic issue posed by this case is of deepest concern to all American citizens, whether members of the Benevolent and Protective Order of Elks or not.

That issue is the right of individual American citizens to form private organizations, and, as members of such organizations, to determine their own associates and membership requirements and being free to enjoy these rights socially, without being compelled to exchange these constitutional rights as a prerequisite or condition to enjoying the benefits conferred by a license from the State.

Counsel for appellant have dealt with the constitutional and legal questions involved in an admirable manner, so this brief will be confined solely to factual matters.

Appellant will necessarily concentrate on the particular facts in its own case. In the brief hereby tendered with this motion, the Benevolent and Protective Order of Elks will present facts not covered by either appellant or appellee, in a much broader and more generic fashion.

It is essential that the present uncertainty as to the applicable law be settled. The continued testing (by individuals, legislative bodies, on both sides of this issue) of the constitutional rights involved should be set at rest. The uncertainty now existing has resulted in multitudinous countercharges, threats and litigation, which, if continued, will result in permanent harm to the welfare of all peoples, communities and the nation. This source of potential community tension should be eliminated.

The attached brief, we submit with the sincere hope that it will be of assistance to the Court.

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BRIEF FOR BENEVOLENT AND PROTECTIVE  
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---

QUESTIONS PRESENTED

In addition to the questions presented in appellant's brief (pp. 2-3), *amicus curiae* wishes to present the following questions for the Court's consideration:

Whether a Federal Court can constitutionally require a private group to forfeit its constitutional right to determine its members as a prerequisite for licensing by a State.

Whether the constitutionally protected right of privacy and free choice of association is so universally practiced and enjoyed by all citizens that it should be free from legislative, administrative or judicial erosion in the area of social rights or activity.





## INTEREST OF *AMICUS CURIAE*

**The Benevolent and Protective Order of Elks Would Be Vitally Affected by a Broad Sweeping Opinion of This Court Directed Toward the Granting or Denial of Liquor Licenses by a State Agency Based Upon the Requirement That Individuals Barter Away Their Constitutional Rights as a Prerequisite to Such Licensing**

The Benevolent and Protective Order of Elks, hereinafter referred to as the "Elks", has been in existence for more than 103 years as a private fraternal organization. It was incorporated under appropriate sections of Federal statutes, in the District of Columbia, in 1895, with its purposes stated as being benevolent, charitable, educational and literary, and has continued in existence since that time. The total membership of the Order, as of March 31, 1971, was 1,520,731, distributed among 2,164 Lodges, designated as "Subordinate Lodges." These Lodges are located in various cities and towns having a population of 5,000 or more in all of the States. There are also Lodges located in Guam, Panama Canal Zone, The Philippines and Puerto Rico.

Typically, these Lodges enjoy the conviviality of the use and consumption of liquor.

There are 135 Subordinate Lodges in the State of Pennsylvania, with a total membership of 96,343. These Lodges are located in various cities and towns in Pennsylvania and range in size from 32 members to 2,344 members. All of these Lodges have complied with the regulations of the Pennsylvania State Liquor Control Board, insuring that the primary purpose of licensing is to assure that the private clubs are in fact private.

No one has a right to become a member of the Elks.

In order for a person to become a member, he must be proposed by other members. His application is thereupon referred to an investigating committee, which conducts an investigation, usually, including a personal interview of the applicant.

After receipt of the application, the membership of the Lodge is notified of the application, and such application is voted upon at a regular meeting of the Lodge. Voting is by secret ballot. A vote of three of the members against the application will prevent the applicant from being accepted into membership.

The membership qualifications are as follows:

1. The applicant must be an American citizen.
2. Applicant must be a white male, at least 21 years of age.
3. He must be of good moral character.
4. He must express belief in God.
5. He must pledge allegiance to the flag of the United States of America, and subscribe to an oath requiring him to uphold and defend the Constitution and laws of the United States.

The Elks have no restriction as to the guest or spouse of a member.

Typically, in all Elks Lodges the use of the club facilities is limited to members, family of members and guests of members.

The facilities of all Elks Lodges are controlled by the membership.

All Elks Lodges are nonprofit organizations and do not seek public patronage.

There is a second Elks organization, known as the "Improved Benevolent and Protective Order of Elks of the World." This Elks organization was founded in 1898 and has approximately 450,000 members, with 1,500 Lodges in the various States, with the greatest number in the eastern and southern States. Its membership is composed largely of (1) American citizens, (2) black males over 21 years of age, (3) professing a belief in God, and (4) of good moral character.

Typically, these Lodges also enjoy liquor licenses issued in accordance with the laws of the various States in which the Lodges are located.

Although the By-Laws of the Improved Benevolent and Protective Order of Elks of the World do not restrict their membership to those of the black race, as a matter of membership policy and personal choice of the members, the Order has been so limited.

Both Elks organizations have lived in harmony and with mutual respect for each other since their respective foundings.

There is no relationship or connection between the Elks of the United States and the organization sometimes designated as the "Canadian Elks."

**A. The Basic Constitutional Right of Privacy and of Private Association Claimed by the Members of the Benevolent and Protective Order of Elks for Themselves and for all Americans Is Being Challenged.**

Counsel for appellant refers to Chapter 371 of the Maine Laws of 1969 (p. 104, App. Br.).



This statute provides as follows:

"No person, firm or corporation holding a license under the State of Maine or any of its subdivisions for the dispensing of food, liquor or for any service or being a State of Maine corporation or a corporation authorized to do business in the State shall withhold membership, its facilities or services to any person on account of race, religion or national origin, except such organizations which are oriented to a particular religion or which are ethnic in character."

Purporting to act under the authority granted to them under the provisions of this statute, the Maine Liquor Commission proceeded to cancel licenses for all of the Elks Lodges in the State of Maine. This action was challenged, and the matter is now pending before the Courts of that State.

Various cases in Maine include:

*B. P. O. E. No. 2043 of Brunswick, Cumberland County, et al. v. Ingraham, et al.*—Superior Court, Cumberland County—Civil Action Docket No. 71-3.

*B. P. O. E. No. 1293 of Gardiner, Maine v. Ingraham, et al.*—Supreme Judicial Court—No. 1328. (By stipulation this has been consolidated with above-entitled case.)

*B. P. O. E. Portland Lodge No. 188 v. Maine State Liquor Commission, et al.*—Superior Court, Cumberland County—Docket No. 71-20.

The first of the series of actions which have been instituted, challenging these constitutional rights, was that of *Gerber, et al. v. Hood, et al.*—Civil No. 7701, W.D. Wash. N.D.—which is presently pending before a three-judge Federal Court.

*Gerber, et al. v. Hood, et al.* is a class action, commenced by several plaintiffs, seeking to enjoin the Washington



State Liquor Control Board from issuing or renewing liquor licenses to private clubs with restrictive membership clauses or membership practices on a basis of race, religion or national origin. The action further seeks to require the Liquor Control Board to revoke all licenses heretofore issued to such organizations.

The Elks intervened in the action on behalf of the 42 Subordinate Lodges of the Order in the State of Washington.

The Court granted the motion to intervene because of the relief sought against revocation of all liquor licenses for these Lodges.

The action further names the three larger fraternal organizations in Washington—i.e., the Elks, the Fraternal Order of Eagles and the Loyal Order of Moose.

The *Gerber* case has apparently served as the model for litigation which has been instituted in other States, which include:

1. Actions involving attempted revocation and denial of liquor licenses on grounds of racial membership qualifications:

*Revere Lodge No. 1171, B. P. O. E. v. Miller, et al.*—Commonwealth of Massachusetts Superior Court, Suffolk County—Docket No. 91901.

*Revere Lodge No. 1171, B. P. O. E. v. Miller, et al.*—Commonwealth of Massachusetts Superior Court, Suffolk County—Equity No. 93413.

*Human Relations Insight League, et al. v. Cheslak, et al.*—State of Nebraska District Court of Lancaster County—No. 268-156.

2. Action seeking to eliminate tax exemption status and

to revoke liquor licenses on grounds of racial and sex membership qualifications:

*Lovell, et al. v. Nutley Lodge No. 1290, B. P. O. E., et al.*—Superior Court of New Jersey—Law Division, Essex County—Docket No. L-7042-70 P.W.

3. Actions seeking to eliminate tax exemption status on grounds of racial qualification in membership:

*McGlotten v. Kennedy, et al.*—U. S. District Court for the District of Columbia—Civil No. 3377-70 (three-judge Court).

*Pitts, et al. v. State of Wisconsin, et al.*—U. S. District Court for the Eastern District of Wisconsin—Civil No. 69-C-260.

- B. *Attempts Have Been Made in State Legislative Bodies to Curtail, Limit and Erode the Basic Human Rights Guaranteed by the First Amendment.*

Various State Legislatures have been petitioned for enactment of legislation similar to the Maine statute referred to above, including:

*Alaska:* Proposed legislation that would have denied liquor licenses to organizations having restrictive membership clauses or practices did not pass.

*Connecticut:* Proposed legislation by State Senate that would have eliminated licenses for food, liquor or any service to any person, firm or corporation with restrictive membership clauses failed to pass.

*New Mexico:* Proposed legislation that would have prohibited issuance of State liquor licenses to private clubs, etc. that discriminate because of race, religion, sex or national origin failed to pass.

*Oregon:* Proposed legislation by State which would have eliminated the tax exempt status and liquor licenses

of organizations having restrictive membership clauses, and other legislation which would have limited activities of such organizations, failed to pass.

*Washington:* Proposed legislation which would have eliminated all licenses to organizations having restrictive membership clauses did not pass.

In addition to the foregoing, it is understood that legislation is pending in the Legislatures of the States of California and Michigan.

### ARGUMENT

**A. The Constitutional Right of Individuals to Choose Their Own Social Intimates so as to Express Their Own Preferences and Dislikes and to Fashion Their Private Lives by Forming or Joining a Club Is an Aspect of the Basic Constitutional Right of Privacy and Private Association That Is of Paramount Importance to all Americans**

"In no country in the world has the principle of association been more successfully used or applied to a greater multitude of objects than in America."<sup>1</sup>

"The Americans of all ages, all conditions and all dispositions constantly form associations. They have not only commercial and manufacturing companies in which all take part but associations of a thousand other kinds, religious, moral, serious, futile, restricted, enormous, or diminutive. The Americans make associations to give entertainments, to found establishments for education, to send missionaries to the antipodes. Wherever at the head of some new undertaking you see the government of France or a man of rank in England; in the United States you will be sure to find an association." (Alexis de Tocqueville—1805-1859)<sup>2</sup>

1. de Tocqueville, Alexis, *Democracy in America* (Knopf: New York, 1948), I, p. 191.

2. *Encyclopedia of Associations* (Gale Research Company: Detroit, 1970).

The principal and indeed the only major source of detailed information concerning nonprofit American membership organizations of a national scope will be found in Gale's *Encyclopedia of Associations*.

There are more than 36,000 various associations, societies, fraternal and patriotic organizations, and other types of groups consisting of voluntary members.

Research reveals that many of these groups limit their membership on the grounds of race, religion, sex or national origin, either by their membership qualifications or by the practices of the members. A listing of these follows, and wherever possible the date of the founding of the organization and approximate number of members are given.

Non-member organizations, trade and business groups, agricultural, scientific, educational, governmental and public administration, military and naval organizations, social welfare, health and medical, public affairs, horticultural, hobby and avocational, athletic and sports organizations, labor unions and Chambers of Commerce have been eliminated from the lists prepared for the Court in this brief.

There is a definite overlapping of the categories set forth. No organization is listed more than once, even though it might conceivably fall in more than one classification.

The Court could well take judicial notice of the fact that many persons are members of more than one organization. We find that Elks are also members, for example, of religiously oriented groups such as B'nai B'rith and Jewish War Veterans, Knights of Columbus and Catholic War Veterans, the Masons and American Legion and Vet-



erans of Foreign Wars, as well as the Friendly Sons of St. Patrick, Sons of Italy, Sons of Norway, the Swedish Club, the Polish National Alliance and many other organizations with "mutual heritage in national origin."

Those organizations having selective membership qualifications or practices limited to Jewish have been listed under the combination of Race and Religion, but the Court's attention is directed to pages 80-82 of Appellant's Brief, where this problem is more fully discussed. We do not profess to be more learned than others in resolving this problem, but rather, have arbitrarily selected this classification while being well aware of its complexity.

## **B. Organizations That Have Selective Membership Qualifications or Practices Based Upon:**

### **1. Race, Religion and Sex:**

Ancient Egyptian Arabic Order Nobles of the Mystic Shrine

(32nd Degree Masons)

F. 1893—M. 20,000

Ancient Egyptian Order of Sciots (AEOS)

(Blue Lodge Masons)

F. 1911—M. 3,000

Benevolent and Protective Order of Elks of the United States of America (BPOE)

F. 1868—M. 1,520,731

(In all States of U.S., as well as Guam, Panama Canal Zone, the Philippines and Puerto Rico)

State Associations: 48—Subordinate Lodges: 2,164

B'nai B'rith Women (Jewish) (BBW)

F. 1897—M. 135,000

Local groups: 915



Convent General of the Knights York Cross of Honour  
(Honorary degree conferred on Freemasons)

F. 1930—M. 8,100

State/Province Pories: 64

Daughters of the Nile, Supreme Temple  
(Mothers, wives, sisters, daughters and widows of  
Shriners)

F. 1913—M. 71,600

Local groups: 129

Degree of Pocahontas, Improved Order of Red Men  
(Women's auxiliary of IORM)

F. 1885—State groups: 40

Fraternal Order of Eagles, Ladies Auxiliaries

F. 1927—M. 175,000

State groups: 36—Local groups: 1,310

General Conference of Grand Courts Heroines of Jericho,  
Prince Hall Affiliation, U.S.A.

(Women's auxiliary to General Grand Conference Holy  
Arch Masons of America—affiliated with National Council  
of Negro Women)

F. 1922—M. 20,500

General Grand Chapter, Order of the Eastern Star

F. 1876—M. 3,000,000

Grand Aerie, Fraternal Order of Eagles (FOE)

F. 1898—M. 825,000

State groups: 50—Local Aeries: 1,600

Great Council of U.S. Improved Order of Red Men  
(Fraternal society of white American citizens)

F. 1765—M. 70,000

State groups: 52—Local groups: 1,442

Hadassah, The Women's Zionist Organization of America  
(Jewish)

F. 1912—M. 300,000

Local groups: 1,300

Improved Benevolent and Protective Order of Elks of the  
World (IBPOEW)

F. 1898—M. 450,000 (estimated)

Local groups: 1,500

Imperial Council of the Ancient Arabic Order of the Nobles of the Mystic Shrine for North America (AAONMS)

F. 1872—M. 863,065

Local Shrine Temples: 170

International Order of Job's Daughters, Supreme Guardian Council

(Girls between ages of 12 and 20 who are related to Master Masons)

F. 1920—M. 150,000

State and Regional Councils: 46

Jewish War Veterans of the U.S.A.—National Ladies Auxiliary

Knights of the Golden Eagle (KGE)

F. 1873—M. 20,000

State groups: 5—Local Chapters: 126

Knights of Pythias

F. 1864—M. 200,000

State groups: 55—Local groups: 2,000

Knights of Peter Claver (KPC)

(Fraternal society of Negro Roman Catholic men)

F. 1909—M. 17,000

State groups: 6—Local groups: 250

Knights Templar, Grand Encampment, U.S.A.

(Masonic Order)

F. 1816—M. 386,000

Loyal Orange Ladies Institution

F. 1876—M. 2,443

State and local Lodges: 80

Loyal Order of Moose (LOM)

F. 1888—M. 1,096,070

State groups: 36—Local Lodges and Chapters: 3,860

Ladies Oriental Shrine of North America (LOS of NA)

F. 1914—M. 24,000

Masonic Service Association of the United States (MSA)

F. 1919—M. 43

Mizrachi Women's Organization of America  
(Jewish) (MWOA)

F. 1925—M. 50,000

Regional groups: 9—Community Councils: 10

Chapters: 330

National Association Legions of Honor  
(NALOH) (Shrine)

F. 1931—M. 10,000 (estimated)

Shrine Temple Units: 50

National Black Sisters Conference (NBSC)

F. 1968—M. 200

National Federation of Buddhist Women's Associations

F. 1952—M. 7,000

National Federation of Jewish Men's Clubs (NFJMC)

F. 1929—M. 85,000

Local groups: 365

National Federation of Temple Brotherhods  
(Jewish) (NFTB)

F. 1923—M. 65,000

Regional Councils: 16—Local Brotherhods: 460

National Federation of Temple Sisterhoods  
(Jewish) (NFTS)

F. 1913—M. 100,000

Districts: 15—Local Sisterhoods: 620

National League of Masonic Clubs (NLMC)

F. 1905

National Sojourners

(Past or present commissioned officers and warrant officers of uniformed forces of U.S. who are Master Masons)

F. 1918—M. 10,443

Local Chapters: 210

National Women's League of the United Synagogue of America (Jewish) (NWL)

F. 1917—M. 200,000

Regional branches: 28—Local Sisterhoods: 765

Order of the Golden Chain

(Female relatives of Masons and Master Masons)

F. 1929—M. 10,000

National Links: 39

Order of DeMolay

F. 1919—M. 165,000 (1965)

Order of the White Shrine of Jerusalem

(Primarily women relatives of Master Masons)

F. 1909—M. 180,303

Shrines: 846

Philalethes Society (Masonic)

F. 1928

Pioneer Women, The Women's Labor Zionist Organization of America (Jewish)

F. 1925—M. 45,000

Councils: 31—Local clubs: 500

Prince Hall Masonry

(Negro Masonry)

F. 1787—M. 312,000

In 35 States, Canada, Liberia and Nassau

Royal Order of Scotland (Masonic) (ROS)

F. ....—M. 3,200

Sons of Jewish War Veterans of the United States of America

Supreme Assembly, International Order of Rainbow for Girls (SAIORG)

(Ritual based on 9th chapter of Genesis)

F. 1922—M. 1,300,000

Local assemblies: 1,900

Supreme Caldron, Daughters of Mokanna (D of M)

(Order for women relatives of Mystic Order Veiled Prophets of the Enchanted Real members)

F. 1919—M. 8,088

Subordinate Caldrons: 57

Supreme Council 33° Ancient and Accepted Scottish Rite of Freemasonry (Southern Masonic Jurisdiction) (AASR-SMJ)

F. 1801—M. 530,000

> Consistories: 207

Supreme Council Ancient and Accepted Scottish Rite of  
Freemasonry (Northern Masonic Jurisdiction)  
(AASR-NMJ)

F. 1813—M. 510,938

State groups: 15—Local groups: 118

Supreme Council, Mystic Order Veiled Prophets of En-  
chanted Realm (MOVPER)

(Fraternal fun Order for Blue Lodge Masons)

F. 1890—M. 100,000

State groups: 18—Local Grotoes: 198

Supreme Council of the Royal Arcanum (SCRA)

(Fraternal benefit life insurance society)

F. 1877—M. 38,000

State groups: 25—Local groups: 330

Supreme Emblem Club of the United States

(Women relatives of members of B.P.O.Elks)

F. 1926—M. 40,000

State Associations: 12—Local Clubs: 448

Supreme Temple Order Pythian Sisters

(Knights of Pythias)

F. 1888—M. 95,000

State groups: 46—Local groups: 1762

Tall Cedars of Lebanon

(Master Masons)

F. 1902—M. 50,000 (1965)

Forests: 100

United Order True Sisters (Jewish) (UOTS)

F. 1846—M. 13,000

Chapters: 48

Universal Craftsmen Council of Engineers (UCCE)

(Masonic)

F. 1903—M. 4,790

State groups: 40—Local groups: 2

## 2. Race and Religion:

Black American Baptist Churchmen (BABC)

F. 1968—M. 327



**Catholic Interracial Council of New York**  
**Ku Klux Klan**

F.: First Klan: 1865; Second Klan: 1915;  
 Third Klan: 1954

**National Committee of Black Churchmen (Civil Rights)**  
 F. 1966—M. 250  
 Regional groups: 5

**National Negro Evangelical Association**  
 F. 1963—M. 20,000

**Order of Amaranth (O of A)**  
 (Masons and their wives, mothers, daughters, widows  
 and sisters)  
 F. 1873—M. 95,231  
 State groups: 35

**Royal Neighbors of America (RNA)**  
 (White men and women—Bible readings, prayers)  
 F. 1895—M. 390,263  
 State groups: 44—Local groups: 6,257

**Sons and Daughters of Liberty**  
 (White, native born Protestants)  
 F. 1915

**Union of Black Clergy and Laity of the Episcopal Church**  
 (UBCL)  
 F. 1968—Local Chapters: 15

### **3. Race and Sex:**

**Acacia**  
 (Sons and brothers of Masons; young men recommended  
 by Masons)  
 F. 1904—M. 22,000 (1965)

**American Fraternal Union (AFU)**  
 F. 1898—M. 25,016  
 State groups: 142

**Ancient Mystic Order of Samaritans (AMOS)**  
 (Fun Order of Independent Order of Odd Fellows)  
 F. 1902—M. 5,953

**Chinese Women's Association (CWA)**

F. 1932—M. 460

**Girl Friends, Inc.**

(Negro professional women)

F. 1927—M. 500 (est.)

Chapters: 25

**Imperial Court, Daughters of Isis**

(Fraternal and charitable organization of women)

F. 1910—M. 7,000

Local groups: 145

**Independent Order of Odd Fellows (IOOF)**

F. 1819—M. 1,200,000

**International Association of Rebekah Assemblies,  
IOOF (IARA)**

(Women's auxiliary to IOOF)

**Maccabees, The (TM)**

F. 1878—M. 263,841

Lodges: 797

**Modern Woodmen of America (MWA)**

(Fraternal benefit life insurance society)

F. 1883—M. 450,000

Local camps: 3,000

**National Association of College Women (NACW)**

F. 1923—M. 1,300

Local groups: 52

**National Association of Colored Women's Clubs  
(NACWC)**

F. 1896—M. 100,000

State groups: 42—Local Clubs: 2,000

**National Society Colonial Dames XVII Century**

F. 1915—M. 5,200

State groups: 32—Local groups: 153

**National Women's Relief Corps, Auxiliary to the Grand  
Army of the Republic**

F. 1883—M. 34,000

State Departments: 33—Local Corps: 830

**Order of United Commercial Travelers of America**  
(Fraternal benefit organization)

F. 1888—M. 248,000

Regional groups: 32—Local groups: 680

**United Daughters of the Confederacy (UDC)**

F. 1894—M. 35,000

Local groups: 1,000

**4. Race:**

**(a) Black and Indian**

**African Nationalist Pioneer Movement (ANPM)**

F. 1941

**Afro-American Patrolmen's League (AAPL)**

F. 1968—M. 1,200

**Association of Interracial Marriages (AIM)**

F. 1969—M. 40

**Biafra Students Association in the Americas**

F. 1967—M. 3,000

Local branches: 50

**National Black Anti-War Anti-Draft Union (NBAWADU)**

F. 1967

**National Conference of Black Elected Officials (COBEO)**

F. 1967—M. 1,500

**North American Indian Association (NAIA)**

F. 1940—M. 135

**Pan African Students Organization in the Americas**

F. 1961—M. 200

**Tribal Indian Land Rights Association (TILRA)**

F. 1960—M. 62,000

Local Chapters: 23

**Universal African Nationalist Movement (UANM)**

F. 1946—M. 4,000

State groups: 10—Local groups: 22

(b) *Yellow*

There are over 130 various Chinese clubs, associations or Tongs, of which very little is known. One writer has expressed it:

"The greatest gap in information about secret societies is for the years since 1910. Much more investigation of the modern period is needed. Research on Chinese secret societies is impeded by the desire of the societies to conceal their true nature and by the general suspicion and distrust with which researchers, especially white researchers, are regarded."<sup>1</sup>

It is not known what the by-laws of these groups are, but their membership practices are well defined.

The largest single family is probably the Wong family, with an estimated membership in the United States of 15,000 to 17,000.<sup>2</sup>

There are apparently 34 associations called the "Chinese Consolidated Benevolent Association," with an estimated membership of 60,000.<sup>3</sup>

Gales' Encyclopedia of Associations, 6th Ed. (1970) does not list these organizations because they have been unable to obtain any information concerning either the date of their founding or the membership.

The following list was obtained only through a search, conducted locally, in the major cities of the United States. Some of these appear to be benevolent groups, as well as social; others appear to have some religious qualifications.

1. Lyman, Stanford M., *The Asian in the West—Social Science and Humanities Publication No. 24* (Western Studies Center, Desert Research Institute, University of Nevada System: Reno and Las Vegas, (1970)

2. Kung, Shien-woo, *Chinese in American Life: Some Aspects of Their History, Status, Problems and Contributions* (University of Washington Press: Seattle, 1962), p. 222

3. *Ibid*, p. 220

for membership, including Protestant, Catholic, Buddhist and others. Practically all are limited to male members only. However, in view of the paucity of information, we have listed them all together in this category, which seems to be their basic membership qualification.

Chinese American Citizens Alliance

Chinese Laundry Association

F. 1932—M. 1,000

Chinese Women's Association

F. 1932—M. 460

Nippon Club (Japanese)

F. 1914—M. 1,722

Rho Psi

(Chinese fraternity)

F. 1916—M. 580

Bing Kong Tong

Chew Lun Association

Chew Lun Lin Yu Association

Chong Sen Benevolent Association

Chu Association

Chung Lee Club

Chung Yuen Club Inc.

Eng Family Benevolent Association

Eng Kuan Kai Associates

Gee How Oak Tien Association

G'Way Sen Association

Gee Tuck Tong Association

Hip Sing Association, Inc.

Hip Wah Hing

Ho Yuen Club

Hop Wo Benevolent Association



- Hok San Society
- Hoy On Association
- Hoy Ping Benevolent Association
- Hoy Sun Ning Yung Benevolent Association
- Jack Sen Tong Association
- Jan Ying Benevolent Association
- Jungs Association
- Kin Fook Association
- Kong Chow Benevolent Association of Southern California, Inc.
- Kow Kong Benevolent Association
- Kuo Min Tong
- Kwong Hoy Association, Inc.
- Lee Association of Chicago
- Lee Gin
- Lee Onn Dong Association
- Leong Chung How Association
- Lim Family Association
- Lum Sai Ho Association
- Lung Kong Tin Yee Association
- Mar Family Association
- Mow Fong Young
- Mon Sang Association
- Moo Kai Association
- Moy Shu Dung Kung Shaw
- Ngi Yeh
- Ning Kue Kung Wui Association
- Oak Tin Association, Inc.
- On Ping

Ong Ko Met Association  
Quans Family Association  
Sam Kiang Charitable Association  
Sam Min Association  
Sam Yick Benevolent Association  
SamYup Benevolent Association  
Sing Keong Association  
Soo Yuen Benevolent Association  
Suey Sing Tong  
Sun We Association, Inc.  
Tom Gar Kung Soo  
Tseng Sum Sing Association  
Tsung Tsin Association  
Tung Goon Association  
Tuna Hwa Association  
Tung On Association, Inc.  
Tung Sen Association  
Way Ben Association  
Wong Family Benevolent Association  
Woo Family Welfare Association  
Yan Wo Benevolent Association  
Yee Fong Toy Association  
Yee Ying Association  
Yep Family Association  
Ying Fat Yuen, Inc.  
Ying On Association, Inc.  
Young Wo Association

## 5. Religion and Sex:

American Association of Jesuit Scientists (AAJS)  
F. 1922—M. 300

American Association of Women Ministers (AAWM)  
F. 1919—M. 300

American Baptist Women (ABW)  
F. 1951—M. 500,000  
State groups: 36—Associations: 400  
Local groups: 6,000

American Federation of Priests (Catholic) (AFP)  
F. 1966—M. 31

American Lutheran Church Men  
F. 1961—M. 70,000  
Districts: 18—Conferences: 167  
Local groups: 2,000

American Lutheran Church Women (ALCW)  
F. 1960—M. 700,000  
Districts: 18—Conferences: 160

Ancient and Illustrious Order Knights of Malta  
(AIOK of M)  
(Fraternal benefit life insurance society of Protestant men)  
F. 1842—M. 7,500  
State groups: 5—Local groups: 60

Archiconfraternity of Christian Mothers (Catholic)  
F. 1881  
Groups: 3,150—Local groups: 300

Brotherhood of St. Andrew (Episcopal)  
F. 1883—M. 5,000  
Chapters: 500

Catholic Association of Foresters (CAOF)  
F. 1879—M. 44,428  
Lodges: 302

Christian Brothers Education Association  
(Catholic) (CEBA)  
F. ....—M. 2,500

**Church Women United**

F. 1941—M. 10,000,000

State groups: 51—Local groups: 2,400

**Catholic Central Union of America (CCUA)**

F. 1855—M. 44,000

State groups: 8—Local groups: 321

**Catholic Daughters of America (CDA)**

F. 1903—M. 215,000

State groups: 50—Local groups: 1,500

**Catholic Kolping Society of America**

F. 1928—M. 1,500

Local groups: 13

**Catholic Women's Benevolent Legion**

F. 1895—M. 4,000

**Christian Business Men's Committee International (CBMCI)**

F. 1938—M. 15,000

**Christian Service Brigade**

F. 1937—M. 55,000 boys

14,000 adult leaders

Local units: 3,000

**Columbian Squires**

(International fraternity of Catholic High School boys)

F. 1925—M. 19,000

State groups: 56—Local groups: 750

**Dames of Malta (D of M)**

(Women's Christian fraternal organization)

F. 1896—M. 9,518

**Daughters of Isabella, National Circle**

(Catholic Women's organization)

F. 1897—M. 120,341

**Daughters of the King (Episcopal)**

F. 1885—M. 8,200

Local groups: 440

**Eucharistic Guard for Nocturnal Adoration (Catholic)**

F. 1938—M. 4,350

Local groups: 45

**Full Gospel Business Men's Fellowship International**  
(FGBMFI) (Glossolalia)

F. 1953—M. 10,000

Local groups: 600

**Holy Name Society (Catholic)**

F. 1274—M. 7,000,000 (estimated)

**International Grail Movement (Catholic)**

F. 1928

**International Supreme Council of World Masons (ISC)**

F. 1948—M. 24,000

U.S. groups: 50—Foreign groups: 32

**Knights of Columbus (K of C)**

F. 1882—M. 1,173,597

State groups: 63—Local groups: 5,588

**Knights of St. John Supreme Commandery**  
(Catholic fraternal organization)

F. 1886—M. 8,700

State groups: 9—Local groups: 170

**Loyal Orange Association of British America**  
(ORANGEMEN)

F. 1867 (first U.S. Lodge)

**Lutheran Church Women (LCW)**

F. 1962—M. 285,000

**Lutheran Women's Missionary League (LWML)**

F. 1942—M. 210,701

State groups: 40—Local groups: 5,870

**National Association of Ministers Wives (NAMW)**

F. 1941—M. 2,100

Local groups: 60

**National Association Priest Pilots (Catholic) (NAPP)**

F. 1964—M. 150

Regional groups: 5

**National Catholic Women's Union (NCWU)**

F. 1916—M. 30,000 (est.)

State groups: 12—Local groups: 259

**National Council of United Presbyterian Men (NCUPM)**

M. 400,000 (est.)



National Council of the Young Men's Christian Associations of the United States of America (YMCA)

F. 1839—M. 5,778,000

Regional Councils: 17—Local Associations: 1,839

National Women's Christian Temperance Union (WCTU)

F. 1874—M. 250,000

State groups: 60—Local groups: 6,000

National Women's Missionary Society of the Church of God

F. 1932—M. 35,000

State groups: 50

Nocturnal Adoration Society (Catholic) (NAS)

F. 1903—M. 100,000

Local Centers: 754

Order of the Alhambra

(Catholic men)

F. 1904—M. 13,500 (1965)

Patriotic Order Sons of America (POSA)

F. 1847

P.E.O. Sisterhood

F. 1869

Russian Orthodox Catholic Women's Mutual Aid Society

F. 1907—M. 2,390

Lodges: 58

Society of African Missions (Catholic)

F. 1856—M. 1,667

Superior Council of U.S. Society of St. Vincent dePaul (Catholic)

F. 1833—M. 44,000

State groups: 46—Local groups: 4,900

Supreme Ladies Auxiliary Knights of St. John (Catholic)

F. 1900—M. 25,000 (estimated)

Local groups: 215

Wesleyan Service Guild (Methodist) (WSG)

F. 1921—M. 130,000

Regional groups: 94—Local groups: 5,847

Women in Community Service (Anti-Poverty) (WICS)

F. 1964—Local groups: 280

Women's International Religious Fellowship (WIRF)  
F. 1959—M. 9;

Young Ladies Institute (Catholic) (YLI)  
F. 1887—M. 16,500 (estimated)  
Branches: 162

Young Men's Institute (Catholic) (YMI)  
F. 1883—M. 5,900  
State groups: 65

Young Women's Christian Association of the United States  
of America (YWCA)  
F. 1855—M. 2,395,000  
Local Units: 6,700

#### **6. Religion and Ethnic or National Origin:**

American Lithuanian Catholic Federation Ateitis  
F. 1910—M. 3,200  
Local groups: 31

American Lithuanian Roman Catholic Organists Alliance  
F. 1911—M. 50  
Local Chapters: 5

American Romanian Orthodox Youth (AROY)  
F. 1950—M. 800  
Local Chapters: 31

Association Canado Americaine (ACA)  
F. 1896—M. 30,359  
State groups: 6—Local groups: 72

Association of Evangelicals for Italian Missions (Baptist)  
F. 1968

Association of Lithuanian Catholic Students Ateitis (SAS)  
F. 1899—M. 375  
State and Regional groups: 5—Local groups: 11

Association of Yugoslav Jews in the U.S.A.  
F. 1942—M. 565

Ateitis Association of Lithuanian Catholic Intellectuals  
F. 1920—M. 1,100  
Local Chapters: 22

**Catholic Workmen**

F. 1891—M. 18,957

State groups: 12—Local groups: 141

**First Catholic Slovak Union of the U.S.A. (FCSU)**

F. 1890—M. 104,000

State groups: 19—Local groups: 1,260

**Hungarian Catholic League of America**

F. 1943—State groups: 15

**Italian Catholic Federation Central Council (ICF)**

F. 1924—M. 10,000 (estimated)

Local groups: 125

**Knights of Lithuania (K of L)**

(Fraternal society of Catholic men and women of Lithuanian descent)

F. 1913—M. 1,700

Local Councils: 44

**Lithuanian American Roman Catholic Federation (LARCF)**

F. 1906—Local branches: 140

**Lithuanian Catholic Youth Association Ateitis**

F. 1910—M. 1,200

Chapters: 36

**Lithuanian Roman Catholic Alliance of America (LRCA)**

F. 1889—M. 7,991

State groups: 163—Local groups: 7

**National Alliance of Czech Catholics (NACC)**

F. 1917—Local Parish groups: 450

**National Union of Czechoslovak Protestants in America and Canada**

F. 1940—M. 200

Regional groups: 5

**Polish Beneficial Association (PBA)**

F. 1900—M. 24,654

Local groups: 132

**Slovenian Women's Union (SWU)**

(Catholic women and children of Slovenian ancestry)

F. 1926—M. 13,000 (estimated)

State groups: 105—Local groups: 3

Sons and Daughters of Malta (Maltese)  
(Catholic Maltese-Americans)  
F. 1946—M. 246

Union of Polish Women in America (UPWA)  
F. 1920—M. 9,379  
District groups: 3—Local groups: 74

Union Saint-Jean-Baptiste D'Amerique  
F. 1900—M. 56,242  
Local Councils: 198

United Hungarian Jews of America (UHJA)  
F. ....—M. 32,000 (estimated)

World Federation of Hungarian Jews (WFHJ)

## 7. Religion:

Action for Interracial Understanding (Catholic) (AIU)  
F. 1950—M. 2,500  
Regional groups: 2—Local Chapters: 20

Agudath Israel of America (Jewish) (AIA)  
F. 1921—M. 35,000  
Local groups: 140

Ambassadors of Mary (Catholic)  
F. 1946—M. 45,000

American Baptist Home Mission Societies  
F. 1832

American Bible Society (ABS)  
F. 1816—M. 500,000

American Biblical Encyclopedia Society (ABES)  
F. 1930

American Catholic Correctional Chaplains Association  
F. 1952—M. 585.

American Church Union (Episcopal) (ACU)  
F. 1938—M. 10,912  
Chapters: 68—Branches: 29

American Federation of Catholic Workers for the Blind  
(AFCWB)  
F. 1954—M. 71

American Jewish Alternatives to Zionism (AJAZ)  
F. 1969

American Jewish Committee (AJC)  
F. 1906—M. 39,500  
Chapters: 84

American Ministerial Association (AMA)  
F. 1920—M. 6,288  
State groups: 43—Local groups: 101

American Scientific Affiliation (ASA)  
(Persons subscribing to the Christian faith who are professional workers in all fields of natural and social sciences.)  
F. 1941—M. 1,650  
Regional Chapters: 12

Angelic Warfare Confraternity (Catholic)  
F. 1727

Apostolate of Suffering (Catholic)  
F. 1926

Archconfraternity of Perpetual Adoration (Catholic)  
F. 1893—M. 10,130

Armenian Church Youth Organization of America (ACYOA)  
F. 1946—M. 1,000  
Local Chapters: 38

Associated Catholic Laymen's First Friday Clubs

Association of Catholic Teachers (ACT)  
F. 1956—M. 1,000

Association for Jewish Demography and Statistics—American Branch  
F. 1957—M. 75

Association of Orthodox Jewish Scientists  
F. ....—M. 900  
Local groups: 12

Association of Marian Helpers (Catholic) (AMH)  
F. 1946—M. 455,000



Association of Romanian Catholics of America (ARCA)

F. 1948—M. 2,000

Local groups: 17

Baptist Bible Fellowship International (BBFI)

F. 1950—M. 1,000,000 (est.)

B'nai B'rith (Jewish) (BB)

(Jewish men, women and youth of good moral character.)

F. 1843—M. 500,000

State and Regional groups: 75

Local groups: 4,099

B'nai B'rith Youth Organization (Jewish) (BBYO)

F. 1924—M. 52,000

Local groups: 1,700

Bnai Zion (Jewish) (BZ)

(Fraternal benefit life insurance society of Jewish families.)

F. 1908—M. 24,000

State groups: 11—Local groups: 128

Bnei Akiva of North America (Jewish) (BA of NA)

(Religious Zionist youth movement.)

F. 1934—M. 6,000

Chapters: 30

Brith Abraham (Jewish)

(Fraternal organization of Zionists.)

F. 1887

Brith Sholon (Jewish)

(Jewish fraternal society for men and women 16 years of age and over.)

F. 1905—M. 20,000

State groups: 3—Local groups: 128

Campus Crusade for Christ

F. 1951—M. 1,500

Canon Law Society of America (Catholic) (CLS)

F. 1939—M. 1,100 (est.)

Catholic Accountants Guild

F. 1947—M. 200

Catholic Aid Association  
F. 1878—M. 66,320

Catholic Biblical Association of America (CBA)  
F. 1936—M. 923  
Local groups: 4

Catholic Campus Ministry Association (CCMA)  
F.....—M. 1,300

Catholic Family Life Insurance (CFLI)  
F. 1868—M. 43,753  
Local Chapters: 159

Catholic Knights Insurance Society  
F. 1885

Catholic Knights of St. George (CKSG)  
F. 1881—M. 16,000  
State groups: 8—Local groups: 345

Catholic Institute of the Food Industry (CIFI)  
F. 1946—M. 550

Catholic Institute of the Press (CIP)  
F. 1944—M. 400

Catholic Order of Foresters  
F. 1883—M. 183,918  
State groups: 28—Local groups: 1,251

Catholic Total Abstinence Union of America  
(Alcohol)  
F. 1872—M. 70,000

Catholics United for the Faith (CUF)  
F. 1968—M. 8,500  
Local Chapters: 26

Catholic Writers Guild of America (CWGA)  
F. 1919—M. 200

Chinese Foreign Missionary Union (CFMU)  
F. 1929—M. 10,000  
Local groups: 18

Christian Crusade  
F. 1948—Supporting families: 250,000 (est.)  
State groups: 40

College Young Christian Students (Catholic) (YCS)

F. 1947—M. 2,000

Regional groups: 4

Committee of Concern (COC)

(Biracial organization of religious leaders, Catholic, Protestant and Jewish, in Mississippi.)

F. 1964

Committee of Southern Churchmen

F. 1964—M. 75

Conservative Baptist Association of America (CBAA)

F. 1947—M. 300,000

State groups: 32—Local groups: 85

Members of 1,510 churches

Croatian Catholic Union of the U.S.A. (CCU)

F. 1921—M. 13,000 (est.)

Crusade for a More Fruitful Preaching and Hearing of the Word of God (Catholic)

F. 1938

Czech Catholic Union (CCU)

F. 1879—M. 6,612

Local Lodges: 55

Damien-Dutton Society (Catholic) (DDS)

(Religious leaders and laymen and women interested in aiding victims of leprosy.)

F. 1944—M. 12,000

State groups: 50—Local groups: 6

Defenders of the Christian Faith

F. 1925—M. 150,000

Family Communion Crusade (Catholic) (FCC)

F. 1950

Federated Russian Orthodox Clubs (FROC)

F. 1927—M. 5,000

Regional groups: 12—Local Chapters: 170

Fellowship of Christian Athletes (FCA)

F. 1954

Franciscan Apostolate of the Way of the Cross (Catholic)

Gideons International (GI)

F. 1899—M. 28,000

State groups: 43—Local groups: 1,074

Greek Orthodox Youth of America (GOYA)

F. 1951—M. 5,000

Districts: 13—Local Chapters: 150

Guild of Catholic Lawyers (GCL)

F. 1928—M. 800

Gustave Weigel Society (Ecumenical)

F. 1966—M. 250

Hashachar (Jewish)

(Organization for Jewish youth, ages 9 to 25.)

F. 1967—M. 10,000

Regional Divisions: 18

Hebrew Veterans of the War with Spain (Jewish)  
(HVWS)

F. 1896—M. 85

Ichred Habonim Labor Zionist Youth (Jewish)

F. 1934—M. 2,000

Local groups: 35

International Catholic Auxiliaries (ICA)

F. 1937—M. 250

International Catholic Deaf Association (ICDA)

F. 1949—M. 5,000

Local Chapters: 97

International Ministerial Federation (IMF)

F. 1935—M. 500

International Society of Christian Endeavor (ISCE)

F. 1881—M. 1,000,000 (est.)

International Walther League (Lutheran)  
(Lutheran teen-agers.)

F. 1893—M. 150,000

State and local groups: 5,000

Jewish Lawyers Guild

F. 1962—M. 250

Jewish War Veterans of the U.S.A. (JWV)

F. 1896—M. 105,000 (est.)

League of Prayer for Unity (Catholic)

F. 1949—M. 300,000

Liberal Religious Youth (Unitarian Universalist) (LRY)

F. 1953—M. 15,000

State groups: 33—Local groups: 400

Liturgical Arts Society (Catholic) (LAS)

F. 1928—M. 320

Loyal Christian Benefit Association (LCBA)

F. 1890—M. 63,000

Lutheran Benevolent Association (LBA)

F. 1926—M. 1,700

Lutheran Fraternities of America (LFA)

F. 1865—M. 6,763

Lutheran Laymen's League (LLL)

F. 1917—M. 155,000

State groups: 43—Local clubs: 2,000

Luther League

(Youth auxiliary of Lutheran Church in America)

Mizrachi Hatzair (Jewish)

(Religious Zionist organization for young people  
between ages of 10 and 26.)

F. 1952—M. 1,000

Local Chapters: 80

Movement for a Better World (Catholic) (MBW)

F. 1952—M. 200 (est.)

National Association of Laymen (Catholic) (NAL)

F. 1967—M. 13,000

National Campus Ministry Association

F. 1965

National Catholic Social Action Conference (NCSAC)

F. 1922—M. 500

National Catholic Society of Foresters (NCSF)

F. 1891—M. 90,651

Local groups: 718



National Catholic Pharmacists Guild of the United States  
(NCPG)

F. 1962—M. 350

National Conference of Shomrim Societies (Jewish)  
(NCSS)

(Police, fire and other public safety officers of the Jewish  
faith.)

F. 1954—M. 5,000

State groups: 3—Local groups: 9

National Conference of Synagogue Youth (Jewish)  
(NCSY)

F. 1954—M. 15,500

Regional groups: 17—Local Chapters: 350

National Council of Young Israel (Jewish) (NCYI)

F. 1912—M. 30,000

Local groups: 87

National Educators Fellowship (NEF)

F. 1953—M. 1,500

National Federation of Catholic Physicians Guilds  
(NFCPG)

F. 1932—M. 6,800

Local groups: 102

National Federation of Temple Youth (Jewish) (NFTY)

F. 1939—M. 30,000

Regions: 21—Local groups: 490

National Huguenot Society

F. ....—M. 4,600

State Societies: 37

National Religious Broadcasters (NRB)

F. 1944—M. 200 (est.)

Regional group: 1

National Spiritual Assembly of the Baha'is of the U.S.

F. 1927—Local Assemblies: 440

National Young Buddhist Association (NYBA)

F. 1948—M. 2,000

Local groups: 80

Nazarene World Missionary Society (NWMS)

F. 1915—M. 272,219

Districts: 78—Local groups: 4,599

Opus Dei (Catholic)

F. 1928—M. 50,000 (est.)

Overseas Missionary Fellowship (OMF)

F. 1888 (in North America)

M. 324 (in U.S. and Canada)

M. 859 (world)

Poale Agredath Israel of America (Jewish) (PAI)

M. 50,000

Presbyterians United for Biblical Concern (PUBC)

F. 1965—M. 800

Progressive Order of the West (Jewish) (POW)

(Fraternal benefit insurance society of persons of Jewish faith.)

F. 1896—M. 714

State groups: 12—Local groups: 22

Protestant Lawyers Association of New York

F. 1950—M. 90

Quaker Theological Discussion Group (QTDC)

F. 1957—M. 450

Railroad Evangelistic Association (REA)

F. 1941—M. 1,000

Rosicrucian Order

(International fraternal order.)

F. 1909—M. 60,000

Local groups: 287

Shomrim Society (Jewish)

(New York City policemen of Jewish faith.)

M. 2,500

Society for the Promotion of Mohammedan Missions

(SPMM)

(Members of Synodical Conference of Lutheran Church who are interested in promoting mission work among Mohammedans.)

F. 1944—M. 2,500

St. Ansgar's Scandinavian Catholic League

F.....—M. 700

State Units: 10

St. Apollonia Guild (Catholic) (SAG)

(For spiritual development of Catholic dentists.)

F. 1958—M. 85

St. Martin de Porres Guild (Catholic)

F. 1935—M. 50,000

Sovereign Order of Saint John of Jerusalem (OSJ)

M. 500

Thomist Association (Catholic)

F. 1938—M. 700

Regional groups and Chapters: 4

United Lutheran Society (ULS)

(Fraternal benefit life insurance society of Lutherans.)

F. 1893—M. 16,000

Local groups: 500

Western Young Buddhist League (WYBL)

F.....—M. 1,555

Local Chapters: 46

World Wide Baraca-Philathea Union

(International organization of Bible classes.)

F. 1890—M. 40,000

State groups: 8

Yavneh-National Religious Jewish Students Association

F. 1960—M. 1,200

Chapters: 40

Young Calvinist Federation (YCF)

F. 1919—M. 14,500

State groups: 48—Local groups: 620

### **8. Religion, Ethnic or National Origin and Sex:**

Ancient Order of Hibernians in America (Irish) (AOH)

F. 1836—M. 191,000

Local groups: 736

Association of Romanian-American Orthodox Ladies  
Auxiliaries

F. 1871—Auxiliaries: 23

## 9. *Ethnic or National Origin:*

Alianza (Spanish)

• (Fraternal benefit insurance society)

Alliance of Poles in America

F. 1895—M. 20,000

Local Lodges: 89

Alliance of Transylvanian Saxons

F. 1902—M. 9,871

Lodges: 43

American Arab Relief Agency (ARRA)

F. 1964

American Australian Association

F. 1948—M. 100

American Austrian Society

F. 1954—M. 275

American Bulgarian League (ABL)

F. 1944—M. 600

American-Byelorussian Cultural Relief Association  
(ABCRA)

F. 1957—M. 65

American Council of Polish Cultural Clubs (ACPCC)

Local groups: 25

M. 1,300

American Croatian Academic Club (ACAC)

F. 1957—M. 75

American GI Forum of United States (Mexico)

F. 1948—M. 20,000

State groups: 23—Local groups: 500

American Hellenic Congress (Greek) (AHC)

F. 1960—Local Chapters: 2,500

American Hungarian Federation (AHF)

F. 1906

American-Hungarian Medical Association

F. 1924—M. 200

American Italian Congress (AIC)

F. 1949—M. 700 (est.)

American Latvian Association in the United States (ALA)

F. 1951—M. 10,000

Local groups: 200

Americans (of Lebanese-Syrian Ancestry) for America (ALSAA)

(Anti-Communist and anti-Zionist Americans of Lebanese and Syrian ancestry)

F. 1964—M. 1,000 (est.)

American Lithuanian Engineers and Architects Association

F. 1950—M. 400

Local Chapters: 9

American Luxembourg Society

F. 1894—M. 1,100

American-Nepal Education Foundation (ANEF)

F. 1956—M. 350

American Russian Aid Association (ARAA)

F. 1945—M. 350

American Russian Slavonic Democratic Club

F. 1925

American-Scandinavian Foundation (ASF)

F. 1910—M. 5,500

American Society of Danish Engineers (ASDE)

F. 1930—M. 200

American Society of the French Legion of Honor

F. 1922—M. 480

American Society of The Italian Legions of Merit

F. 1965—M. 200

American Committee on Italian Migration (ACIM)

F. 1952—M. 30,000

American Society of Rio de Janeiro (Brazilian)

F. 1918—M. 1,000 (est.)

American Society of Swedish Engineers (ASSE)

F. 1888—M. 300



American-Turkish Society (ATS)

F. 1949—M. 225

Anglo-American-Hellenic Bureau of Education (Greek)

F. 1941—M. 2,500 (est.)

Armenian Educational Foundation (AEF)

F. 1950—M. 40

Armenian General Benevolent Union of America

F. 1906—M. 9,000 (est.)

Armenian Progressive League of America (APLA)

Armenian Revolutionary Federation of America (ARFA)

Armenian Students Association of America (ASA)

F. 1910—M. 600

Armenian Youth Federation of America (AYF)

M. 2,500

Local Chapters: 60

Association of American Youth of Ukrainian Descent  
(ODUM)

F. 1950—M. 1,075

State groups: 14

Association of the Free French in the U.S.

F. 1945—M. 400

Association of Hungarian Students in North America  
(AHS)

F. 1957—M. 1,500

Association of Lithuanian Foresters in Exile (LMSI)

F. 1949—M. 68

Association Medicale Franco-Américaine (AMFA)

F. 1936—M. 150 (est.)

Association of Russian Imperial Naval Officers in America

F. 1923—M. 150

Association of Russian War Invalids of First World War

F. 1954—M. 118

Association of the Sons of Poland (SSP)

F. 1903—M. 18,000

Local groups: 120

Austro-American Society (Austrian)

F. 1945—M. 5,000

Local Chapters: 5

Belgian American Educational Foundation (BAEF)

F. 1920—M. 94

Belgian Engineers in North America (BENA)

F. 1954—M. 110

Bohemian Free Thinking School Society (Czech)

F. 1863

Brazilian Center of New York

F. 1958—M. 200

Brooklyn Clubs International

F. 1967

Bulgarian National Front

F. 1948—M. 1,000

Byelorussian-American Association in the U.S.A. (BAZA)

F. 1949—M. 1,800

State groups: 7—Local groups: 3

Byelorussian Liberation Front (BLF)

F. 1957—M. 250

Branches: 5

Byelorussian Youth Association of America (BYAA)

F. 1951—M. 200

State groups: 4

Cape Verdian League Association (Portuguese)

M. 85

Committee of French Speaking Societies

F. 1927—M. 2,500 (est.)

Conference of Americans of Central and Eastern European  
Descent (CACEED)

F. 1956—M. 8

Confederated Spanish Societies

F. 1936—M. 2,500

Croatian Fraternal Union of America (CFU)

F. 1894—M. 117,000

Local Lodges: 1,100

Czech American National Alliance (ANA)

Czechoslovak National Council of America

F. 1918

Czechoslovak Rationalist Federation of America (CRFA)

Czechoslovak Society of America (CSA)

F. 1854—M. 52,000

Czechoslovak Society of Arts and Sciences in America

F. 1958—M. 980

Damascus Fraternity

M. 200

Danish Brotherhood in America

F. 1882—M. 10,000

Descendants of the Illegitimate Sons and Daughters of the  
Kings of Britain

F. 1950—M. 90

English-Speaking Union of the United States (British)  
(ESU)

F. 1920—M. 37,000

Estonian Aid

F. 1950

Evrytanian Association of America (Greek)

F. 1944—M. 450

Federation of American Citizens of German Descent  
(FACGD)

F. 1946—M. 3,850

Local Branches: 17

Federacion Estudiantil Hispanoamericana (Spanish)  
(Univeristy students in area of New York City)

F. 1963—M. 750

**Federation of French Alliances in the United States (FFAUS)**

F. 1902—Chapters: 280

**Federation of French War Veterans (FFWV)**

F. 1919—M. 500 (est.)

**Federation of Hellenic American Societies of Greater New York (Greek)**

**Federation of Hungarian Former Political Prisoners**

F. 1951—M. 15,000 (est.)

**Federation of India Student Associations of the United States of America**

F. 1964—M. 60

**Federation of Ukrainian Student Organizations of America (SUSTA)**

F. 1953—M. 2,500

**Finnish-American Historical Society of the West**

F. 1962—M. 300

**Finnish American League for Democracy (FALD)**

**Finnish-American Society (FAS)**

F. 1943—M. 12,000

Regional groups: 40

**Finnish War Veterans in America (FWVA)**

F. 1934—M. 290

**First Hungarian Literary Society (FHLS)**

F. ....—M. 600

Local groups: 6

**Free Albania Organization (FAO)**

F. 1940—M. 1,200

**French-American Atlantique Association**

F. 1947—M. 15

**French Engineers in the United States**

F. 1944—M. 220

Local groups: 2

**Friends of India Committee**

F. 1961

Fund for the Relief of Russian Writers and Scientists in Exile (LITFUND)

F. 1918—M. 274

Local groups: 3

German-American National Congress (DANK)

F. 1958—M. 20,000

German Order of Harugari (DOH)

F. 1847—M. 2,000

State Grand Lodges: 8—Subordinate Lodges: 80

German Society of the City of New York

F. 1784—M. 350

Grand Council of Columbia Associations in Civil Service (Italo-American)

F. 1938—M. 80,000

Constituent groups: 53

Greek American Progressive Association (GAPA)

F. 1923—M. 10,000

Chapters: 150

Holland Society of New York

F. 1885—M. 1,050

Regional and local groups: 25

Hungarian Committee

(Political exiles from Hungary)

F. 1958—M. 10

Hungarian National Sports Federation (HNSF)

F. 1949—M. 5,000

Hungarian Reformed Federation of America (HRFA)

F. 1896—M. 36,000

State groups: 6—Local groups: 204

Iuliu Maniu American Romanian Relief Foundation (IMF)

F. 1952—M. 300

Independent Order of Svithiod (IOS) (Scandinavian)

F. 1880—M. 10,000

Local groups: 59

Indonesian Students Association in the United States

F. 1961—M. 600

Local Branches: 42



International Order of Runeberg (Finnish-Swedish)

F. 1920—M. 4,000

Local Lodges: 62

Iran Foundation

F. 1948

Iranian Students Association in the United States (ISAUS)

F. 1952—M. 3,000

Local Chapters: 25

Irish Institute (II)

F. 1950—M. 2,000

Israeli Students Organization in the U.S.A. and Canada

F. 1950—M. 2,300

Local Chapters: 46

Italian American War Veterans of the United States  
(ITAM Vets)

F. 1932—M. 8,500 (est.)

State Associations: 10—Local Posts: 110

Italian Charities of America (ICA)

F. 1936—M. 1,200

Italian Welfare League (IWL)

F. 1920—M. 600

Italo American National Union

F. 1895—M. 7,500

Korean National Association

(Operates Korean language school for children and young adults)

Kosciuszko Foundation (Polish) (KF)

F. 1925—M. 2,000

Kossuth Foundation (Hungarian) (KF)

F. 1957

League of Americans of Ukrainian Descent

F. 1940—M. 52

Federation of 52 civic, religious and welfare organizations with 8,000 members of Ukrainian descent

League of United Latin American Citizens  
(Pan American) (LULAC)  
F. 1929—M. 20,000

Lemko Association (Carpatho-Russian)  
(Fraternal and cultural organization)  
F. 1929—M. 1,500

Lithuanian Alliance of America (LAA)  
F. 1886—M. 10,000  
Local groups: 260

Lithuanian Scouts Association, College Division  
F. 1924—M. 400  
Local Chapters: 16

Lithuanian Veterans Association Ramove

Luxembourg Brotherhood of America (LBA)  
F. 1902—M. 702  
State Branches: 8

Macedonian Patriotic Organization of U.S. and Canada  
(MPO)  
F. 1922

Maltese-American Benevolent Society (MABS)

Maltese Union Club  
F. 1931

Masaryk Institute (Czech)  
F. 1937—M. 300

Movement of Czechoslovak Christian-Democrats in Exile  
F. 1957—Regional groups: 6

Mutual Aid Association of the New Polish Immigration  
F. 1949—M. 750

Mutual Society of French Colonials (MSFC)  
F. 1925—M. 175

Mutualista Obrera Mexicana  
(Federation of Mexican societies in New York City)  
F. 1936—M. 3

National Advocates Society (Polish)  
M. 1,000 (est.)

National Association of Polish Americans (NAPA)  
F. 1966

National Committee for Liberation of Slovakia (NCLS)  
F. 1949—M. 2,500

Natl. Gymanfa Ganu Association of U.S. and Canada  
(Welsh)  
F. 1929—M. 2,500

National Lithuanian Society of America  
F. 1949—M. 1,250  
Local Chapters: 21

National Medical and Dental Association  
(Polish) (NMDA)  
F. 1900—M. 1,000  
State groups: 7

National Slovak Society of the United States of America  
F. 1890—M. 36,000 (est.)  
Lodges: 800 (est.)

Netherland Benevolent Society of New York (NBS)  
F. 1908—M. 300

Netherland Club of New York  
F. 1903—M. 700 (est.)

Nigerian Students Union in the Americas (NSUA)  
F. 1962—M. 4,000

North American Swiss Alliance (NASA)  
F. 1865—M. 4,200

Norwegian Club  
F. 1904—M. 100

Organization of Arab Students in the U.S.A. and Canada  
(OAS)  
F. 1952—M. 7,000  
Clubs: 102

Pakistan Students' Association of America (PSAA)  
F. 1953—M. 1,500

Pan-Albanian Federation of America, Votra  
F. 1912—M. 1,500  
U.S. branches: 21

Pancretan Association of America (Greek)  
F. 1929—M. 2,500

Pan-Macedonian Association (Greek)  
F. 1947—M. 6,000

Pan-Rhodian Society of America (Greek)  
F. 1926—M. 1,000

• Peruvian American Association

Polish Association of America  
F. 1895—M. 6,543

Polish Falcons of America (PFA)  
(Fraternal benefit insurance society)  
F. 1887—M. 28,100

Polish Institute of Arts and Sciences in America (PIASA)  
F. 1942—M. 480

Polish Legion of American Veterans, U.S.A. (PLAV)  
F. 1921—M. 15,000  
State Departments: 13—Local Posts: 107

Polish National Alliance of Brooklyn, U.S.A.  
F. 1903

Polish National Alliance of the United States of North America (PNA)  
F. 1880—M. 332,962  
Local groups: 1,405

Polish National Union of America (PNUA)  
F. 1908—M. 32,550  
Local groups: 231

Polish Singers Alliance of America (PSAA)  
F. 1889  
State groups: 100—Local groups: 15

Polish Union of America (PUA)  
(Fraternal benefit life insurance society)

Polish Union of the United States of North America  
F. 1890—M. 16,226  
Local Lodges: 324

**Polynesian Society**

(Social and welfare organization)

F. 1946—M. 250

**Portuguese American Progressive Club of New York****Portuguese Continental Union of the United States of America (PCU)**

F. 1925—M. 9,315

Local Lodges: 60

**Portuguese Society Queen St. Isabel**

F. ....—M. 13,000

Local groups: 129

**Royal Clan, Order of Scottish Clans (OSC)**

F. 1878—M. 15,767

**Russian Brotherhood Organization of the U.S.A.**

F. 1900—M. 12,084

State groups: 5—Local Lodges: 387

**Russian Children's Welfare Society (RCWS)**

F. 1926—M. 200 (est.)

**Russian Consolidated Mutual Aid Society of America (RCMASA-ROOVA)**

F. 1925—M. 3,327

**Russian Independent Mutual Aid Society (RIMAS)**

F. 1931—M. 1,471

**Russian Nobility Association in America**

F. 1938—M. 120

**Russian Orthodox Fraternity Lubov**

F. 1912—M. 1,080

Local Lodges: 73

**Russian People's Center (RPC)**

F. 1929—M. 500

**Russian Student Fund**

F. 1921

**St. Andrew's Society of the State of New York (Scottish)**

F. 1756—M. 1,200



St. David's Society of the State of New York (Welsh)  
F. 1801—M. 250 (est.)

Scandinavian American Fraternity (SAF)  
F. 1893—M. 5,696  
Local groups: 88

Scandinavian Fraternity of America (SFA)  
F. 1915—M. 10,000  
Local groups: 112

Scotch-Irish Society of the United States of America  
F. 1889—M. 360

Scottish War Veterans of America (SWVA)  
F. 1940—M. 80  
Local group: 1

Selfreliance Association of American Ukrainians (SAAU)  
F. 1947—M. 10,000  
State groups: 17

Serb National Federation  
F. 1929—M. 24,000

Slavonic Benevolent Order of the State of Texas  
F. 1897—M. 35,079  
Local Lodges: 142

Sloga Fraternal Life Insurance Society  
F. 1908—M. 2,978

Slovak Catholic Sokol (SCS)  
F. 1905—M. 51,000 (est.)  
Local groups: 18

Slovak League of America (SLA)  
F. 1907—M. 11,200  
State groups: 8—Local groups: 123

Slovak Writers and Artists Association  
F. 1954—M. 57

Slovene National Benefit Society (SNPJ)  
F. 1904—M. 68,000  
Local groups: 525

Slovenian Mutual Benefit Association (SMBA)  
F. 1910—M. 21,300 (est.)  
Local groups: 50

Society of Danube Swabians

F. 1953—M. 3,050

Society of Kastorians "Omonia" (Greek)

F. 1910—M. 500

Society of Russian Veterans of the World War (SRV)

Sokol U.S.A. (Slovak)

F. 1896—M. 23,000

District groups: 12—Local groups: 200

Sons of Norway (S/N)

F. 1895—M. 40,000

State groups: 23—Provinces: 3

Local groups: 260

Sons of Scotland Benevolent Association

F. 1876

Spanish Benevolent Society "La Nacional"

M. 3,500

Steuben Society of America (German) (SSA)

F. 1919

Swedish Colonial Society (SCS)

F. 1908—M. 550

Swiss Benevolent Society of New York (SBS)

F. 1851—M. 1,000

Swiss Society of New York

F. 1930—M. 475

Thessalonikian Society of America "Saint Demetrios"  
(Greek)

F. 1960—M. 300

Tolstoy Foundation (Russian) (TF)

(Voluntary agency to assist refugees from Soviet Russia  
"and other countries under Communist oppression")

F. 1939—M. 7,000

Ukrainian Artists' Association in U.S.A. (OMUA)

F. 1952—M. 60

Chapters: 3

Ukrainian Congress Committee of America (UCCA)  
(Federation of Ukrainian anti-Communist  
organizations)

F. 1940—M. 200

Local Branches: 115

Ukrainian Engineers' Society of America (UESA)

F. 1948—M. 650

Chapters: 9

Ukrainian Life Cooperative Association

F. 1954—M. 145

Ukrainian Medical Association of North America  
(UMANA)

F. 1950—M. 1,200

Local groups: 15

Ukrainian National Association (UNA)

(Fraternal benefit life insurance society)

F. 1894—M. 87,000

Districts: 29—Local Chapters: 489

Ukrainian National Youth Federation of America  
(UNYFA)

F. 1933—M. 150

Local groups: 4

Ukrainian Workingmen's Association (UWA)

Ukrainian Youth League of North America (UYLNA)

F. 1933—M. 800

Ulster-Irish Society (UIS)

F. 1927—M. 250

Unión Española Benéfica de California (Spanish)

(Fraternal benefit life insurance society)

Union and League of Romanian Societies of America  
(ULRSA)

M. 5,082

State groups: 65

Union of Poles in America (Polish) (UPA)

United American Croats (UAC)

F. 1946—M. 5,000

Local Branches: 16

United Friends of Needy and Displaced People  
of Yugoslavia

F. 1946—M. 500

United-Italian American Labor Council (UIALC)

F. 1941.

United Italian American league (UIAL)

(Federation of Italo-American civic and political organizations)

United Lithuanian Relief Fund of America (ULRA)

F. 1944—M. 2,000

State Divisions: 3—Local Chapters: 70

United National Life Insurance Society  
(Portuguese) (UNLIS)

F. 1868—M. 15,000

State groups: 4—Local groups: 98

United Russian Orthodox Brotherhood of America  
(UROBA)

F. 1915—M. 3,640

Local Lodges: 150

United Swedish Societies (USS)

(Federation of 60 Swedish organizations)

F. 1903—M. 7,500 (est.)

United White Ruthenian (Byelorussian) American Relief  
Committee

F. 1948—M. 478

Branches: 3

Welsh Society

F. 1729—M. 320

West Indian Students Association (WISA)

F. 1949—M. 200

Chapters: 5

Western Bohemian Fraternal Association (WBFA)

F. ....—M. 60,000

Lodges: 294

Western Slavonic Association (WSA)

F. 1908—M. 10,490

State Lodges: 18—Local Lodges: 45

Whiteruthenian (Byelorussian) Congress Committee of America

F. 1951—M. 10

World Association of Estonians (WAE)

F. ....—M. 500 (est.)

World Association of Upper Silesians

F. 1948—M. 3,442 (U.S.)

World Federation of Ukrainian Student Organizations of Michnowsky (TUSM)

F. 1949—M. 600

#### 10. *Ethnic or National Origin and Sex:*

American Union of Swedish Singers (AUSS)

F. 1892—M. 900

Regional Divisions: 3—Local Choruses: 31

Armenian Relief Society (ARS)

F. 1910—M. 16,000 (est.)-world

M. 3,000 in U.S. and Canada

Association of American Wives of Europeans (AAWE)

M. 215

Association of Philippine-American Women (APAW)

F. 1947

Association of Polish Women of the United States

Baltic Women's Council (BWC)

F. 1947

Canadian Club of New York (CCNY)

F. 1903—M. 1,673

Chinese Women's Benevolent Association

Committee of French American Wives

F. 1939—M. 100



**Danish Sailors and Firemen's Union**  
F. 1897

**Daughters of Evrytania (Greek)**  
F. 1948—M. 150

**Daughters of Penelope (Greek)**  
F. 1929—M. 13,000  
Local Chapters: 314

**Daughters of Scotia (Scottish)**  
F. 1899—M. 17,000

**Friends of A.D.I.R. (French)**  
(American representative of Association "Nationale des Anciennes Deportees et Internees de la Resistance (ADIR), an organization of women who served in the French Resistance Movement during World War II)

**Maids of Athens (Greek) (MA)**  
F. 1936—M. 1,300  
Chapters: 155

**National Council of Women of Free Czechoslovakia (NCWFC)**  
F. 1951—M. 125  
Local groups: 4

**National Society, Daughters of the Barons of Runnemede (DBR)**  
F. 1921—M. 650

**National Society, Daughters of the British Empire in the United States of America**  
F. 1909—M. 5,500

**Nichibei Fujinkai (Japanese)**  
F. 1960—M. 300

**Norwegian Seamen's Association**

**Order of Ahepa (Greek)**  
F. 1922—M. 25,000  
Local groups: 430

**Polish Legion of American Veterans U.S.A., Ladies Auxiliary**

F. 1921—M. 8,000  
State and Regional groups: 16  
Local Chapters: 86

Polish Women's Alliance of America

F. 1898—M. 91,000

State groups: 17—Local groups: 750

St. George's Society of New York (British)

F. 1770—M. 1,000

Schlaraffia Nord-Amerika (German)

F. 1859—M. 700

Local Chapters: 24

Seamen of Sweden, Inc.

F. 1948

Society of Daughters of Holland Dames

F. 1895—M. 150

Society of the Friendly Sons of St. Patrick in the City of New York (Irish)

F. 1784—M. 1,500

Sons of Pericles (Greek)

(Auxiliary of Order of Ahepa)

Sons of Italy Supreme Lodge

Supreme Lodge of the Danish Sisterhood of America (DSA)

F. 1883—M. 5,000 (est.)

Local groups: 120

Ukrainian National Women's League of America (UNWLA)

F. 1925—M. 7,000

UNICO National (Italian) (UNICO)

(Business and professional men of Italian extraction or married to a person of Italian extraction)

F. 1922—M. 4,000

Chapters: 100

## 11. Sex:

Active 20-30 International

F. 1922—M. 4,800

Local Clubs: 240

Adventurers Club of New York

F. 1903—M. 368

Altrusa International

(Service organization of executive and professional women)

F. 1917—M. 18,000

Districts: 13—Local groups: 525

American Gold Star Mothers

F. 1928—M. 17,000

State Departments: 33—Local Chapters: 540

American Interprofessional Institute (AII)

F. 1924—M. 805

Local Chapters: 15

American Legion Auxiliary (ALA)

F. 1919—M. 1,000,000 (est.)

State groups: 54—Local groups: 14,000

American War Dads (AWD)

F. 1942—M. 5,000

State groups: 16—Local groups: 112

American War Dads Auxiliary (AWDA)

F. 1945—M. 2,396

American War Mothers (AWM)

F. 1917—M. 20,000

State groups: 34—Local groups: 600

American Woman's Association (AWA)

(Business and professional women and women in public affairs)

F. 1922

American Women's Voluntary Services (AWVS)

F. 1940—M. 5,000

Local groups: 40 (est.)

Another Mother for Peace (AMP)

F. 1967—M. 65,000 (est.)

Armenian Women's Welfare Association

F. 1921—M. 500

Association of the Junior Leagues of America (AJLA)

F. 1921—M. 89,700

Regional groups: 14—Local Leagues: 209

Auxiliary to Sons of Union Veterans of the Civil War

F. 1883—M. 5,123

Aztec Club of 1847

(Direct male descendants of commissioned officers of U.S. armed services who took part in Mexican War)

F. 1847—M. 170

Circle K International

(Service organization for college men sponsored by Kiwanis International)

F. 1955—M. 11,000

Local groups: 625

Civitan International (CI)

(Business and professional men)

F. 1920—M. 36,000

Clubs: 1,600

Colonial Dames of America (CDA)

F. 1890—M. 2,000

Chapters: 17

Companions of the Forest of America

(Fraternal benefit life insurance society for women)

F. 1885—M. 300,000 (est.)

Cosmopolitan Associates (Women) (CA)

(Foreign-born wives)

F. 1950—M. 5,500

Local Chapters: 80

Country Women's Council, U.S.A. (CWC)

F. 1939—M. 3,000,000

State groups: 66

Cosmopolitan International

(Community business and professional men)

F. 1933—M. 4,064

State Federations: 8—Local groups: 100

Dames of the Loyal Legion of the United States (DLL)

F. 1899—M. 200 (est.)

State groups: 9



**Daughters of the Cincinnati (DC)**

F. 1894—M. 402

**Daughters of the Republic of Texas**

F. 1891—M. 3,000

Chapters: 55

**Disabled American Veterans Auxiliary (DAVA)**

F. 1922—M. 35,000

**Fathers-At-Large (F @ L)**

F. 1963—M. 150 (est.)

**Forty and Eight**

(Fraternal organization of Veterans who are also members of American Legion)

F. 1920—M. 75,000

Local groups: 1,050

**Forty Plus Club of New York**

F. 1939—M. 1,300

**General Federation of Women's Clubs (GFWC)**

F. 1890—M. 11,000,000 (53 countries)

Membership in U.S. includes 800,000 members in 15,600 Clubs

**General Society of Colonial Wars (GSCW)**

F. 1892—M. 4,200

State Societies: 29

**Gold Star Wives of America (GSWA)**

F. 1945—M. 1,000

**Honorable Order of the Blue Goose, International**  
(Property and casualty insurance men)

F. 1906—M. 13,000

State groups: 66

**International Association of Torch Clubs (Torch)**

(Men from 25 professions)

F. 1924—M. 5,300

Local groups: 116

**International Geneva Association (IGA)**

(Fraternal and benevolent organization of men in hotel, restaurant, catering trades, beverage, food, etc., industries)

F. 1904—M. 2,500



**International Inner Wheel**  
 (Wives of Rotarians)  
 F. 1934—M. 43,000

**International Order of Hoo-Hoo**  
 (Fraternal society of men in forest products and lumber industry)  
 F. 1892—M. 8,000  
 Local Clubs: 129

**International Toastmistress Clubs (ITC)**  
 F. 1938—M. 18,000  
 Local groups: 1,150

**Iota Tau Tau**  
 (Women law students and attorneys)  
 F. 1925—M. 1,500  
 Local Chapters: 39

**Key Club International (KCI)**  
 F. 1925—M. 95,000  
 State Districts: 30—Clubs: 3,500

**Kiwanis International (KI)**  
 F. 1915—M. 275,000  
 Districts: 30—Local Clubs: 5,700

**Ladies Auxiliary, Military Order of the Purple Heart,  
 United States of America**  
 F. 1934—M. 3,000

**Ladies of the Grand Army of the Republic**  
 F. 1885—M. 10,000  
 State Departments: 31—Local Circles: 353

**La Leche League International (LLI)**  
 F. 1956—M. 6,000  
 Local groups: 700

**La Sertoma International**  
 F. 1929—M. 5,000  
 Regional groups: 11

**Legion of Guardsmen Auxiliaries**  
 F. 1948—M. 1,000  
 Local Chapters: 15

**Lions International (LI)**

F. 1917—M. 913,522 (145 countries)

Local Clubs: 23,807

**Majestic Circle, Military Order of Lady Bugs of U.S.A.  
(MOLB)**

F. 1925—M. 4,500

State Royals: 15—Local Circles: 160

**Marine Corps Fathers Association of New York**

F. 1943—M. 200

**Marine Corps Auxiliary (MCLA)**

F. 1937—M. 3,500

State groups: 20—Local groups: 169

**Merrill's Marauders Association**

F. 1947—M. 600

**Military Order of Foreign Wars of the United States  
(MOFW)**

F. 1894—M. 3,000 (est.)

**Military Order of the Loyal Legion of the United States  
(MOLLUS)**

F. 1865—M. 1,200

State Commanderies: 13

**Minute Women of the United States of America**

F. 1949

**Moms of America**

(Mothers of Veterans)

F. 1941—M. 3,600 (est.)

**Mothers of World War II**

F. 1942—M. 8,500

State groups: 8—Local groups: 350

**National Achievement Clubs (NAC)**

F. 1937—M. 8,000

**National Association of Navy and Marine Veterans of the  
Spanish-American War, 1898-1902**

F. 1941—M. 134

Regional groups: 3

**National Council, Daughters of America (DA)**  
(Affiliated with Junior Order, United American Mechanics)

F. 1891—M. 74,000

State groups: 33

**National Exchange Club (NEC)**

F. 1911—M. 45,000

District groups: 29—Local Clubs: 1,100

**National Federation of Business and Professional Women's Clubs (NFBPWC)**

F. 1919—M. 178,000

State groups: 53—Local groups: 3,800

**National Federation of Grandmother Clubs of America**

F. 1938—M. 20,000 (est.)

**National Order of Trench Rats (Disabled) (NOTR)**

F. 1924—M. 3,100

Dugouts (local groups): 125

**National Order of Women Legislators (OWL)**

F. 1938—M. 374

**National Society Colonial Daughters of the 17th Century**

F. 1896

**National Society, Daughters of the American Colonists (DAC)**

F. 1921—M. 10,000

State groups: 46—Local groups: 250

**National Society, Daughters of the American Revolution**

F. 1890—M. 188,031

Local Chapters: 2,894

**National Society Daughters of Utah Pioneers**

F. 1901—M. 40,000

County Companies: 127—Local Camps: 1,015

**National Society of the Sons of Utah Pioneers**

F. 1933—M. 1,150

Chapters: 24

**National T.T.T. Society (TTT)**

(Women's charitable organization)

F. 1911—M. 6,533

State groups: 6—Local groups: 266

**National Society, United States Daughters of 1812**

F. 1892—M. 4,500

State groups: 33—Local groups: 115

**National Society Women Descendants of the Ancient and Honorable Artillery Co. (DAH)**

F. 1927—M. 900

**National Yeomen F (NYF)**

F. 1926—M. 1,300

**Native Daughters of the Golden West (NDGW)**

F. 1886—M. 20,000

**Native Sons of the Golden West (NSGW)**

F. 1875—M. 16,000

**Naval Order of the United States**

F. 1890—M. 4,500

Local groups: 11

**Navy Club of the United States of America Auxiliary**

F. 1941—M. 1,000

State and local groups: 20

**Navy Mothers' Clubs of America (NMCA)**

F. 1930—M. 25,000

State groups: 28—Local groups: 550

**Navy Wives Clubs of America (NWCA)**

F. 1935—M. 5,000

Chapters: 115

**New York Southern Society**

F. 1886—M. 900

**Optimist International**

(Federation of business, industrial and professional men's service clubs)

F. 1919—M. 100,000

Districts: 41—Local Clubs: 2,900

**Order of the Founders and Patriots of America (OFPA)**

F. 1896—M. 900

State groups: 15



**Phi Delta Kappa**

(Women who teach or hold administrative positions in public schools)

F. 1923—M. 5,000

Chapters: 77

**Pilot Club International**

F. 1921—M. 15,000 (est.)

Local Clubs: 500

**Quota International (QI)**

(Women holding executive positions in business and the professions)

F. 1919—M. 12,000

Local groups: 400

**Round Table International**

F. 1922—M. 1,600

Local groups: 50

**Ruritan National**

(Men's civic service club in towns of 5,000 population or less)

F. 1928—M. 35,113

Local groups: 1,169

**Sertoma International**

(Business and professional men)

F. 1943—M. 20,000

Districts: 54—Local groups: 525

**Society of California Pioneers (SCP)**

F. 1850—M. 1,075

**Society of Cincinnati**

F. 1783—M. 2,450

State groups: 13

**Sons of the American Legion**

F. ....—M. 16,327

**Sons of Spanish American War Veterans (SSAWV)**

F. 1927—M. 940

Departments: 9—Camps: 28

**Sons of Union Veterans of the Civil War (SUVCW)**

F. 1881—M. 8,000

State groups: 21—Local Camps: 400



**Soroptimist Federation of the Americas (SFA)**  
 (Executive and professional women in 11 North, South  
 and Central American countries and islands)

F. 1921—M. 26,000

Local Clubs: 890

**St. Nicholas Society**

(Male descendants of persons living in New York prior  
 to 1785)

F. 1835

**Tau Gamma Delta**

(Women in business and the professions)

F. 1945—M. 550

**The Westerners**

F. 1945—M. 963

**Toastmasters International**

F. 1945—M. 75,000

**Travelers Protective Association of America (TPAA)**

F. 1896—M. 204,812

State Divisions: 32—Local Posts: 290

**United States Army Ambulance Service Association  
 (USAACS)**

F. 1920—M. 800

Local groups: 7

**United States Army Mothers, National**

F. 1940—M. 8,000 (est.)

State groups: 12—Local Posts: 106

**Venture Club Council of the Americas**

(Business and professional women who have not  
 reached the age of 32)

F. 1934—M. 2,000

Local Clubs: 150

**Wheels of Progress (WP)**

F. 1924—M. 750 (est.)

**Widows of World War I (WWW I)**

F. 1946—M. 5,327

State Departments: 11—Local Chapters: 162

**Wives of the Armed Forces, Emeritus (WAFE)**

F. 1942—M. 12,000 (est.)

State groups: 17

**Women's Army Corps—Veterans Association (WACVA)**

F. 1947—M. 2,000

Local groups: 32

**Women of the Legion of Valor, U.S.A.**

F. ....—M. 400

**Women's Overseas Service League (WOSL)**

F. 1921—M. 2,000

Service Areas: 11—Local Units: 60

**Women World War Veterans (WWV)**

F. 1919—M. 80,000

**Woodmen Rangerettes**

(Organization of girls to age 16, sponsored by Woodmen of the World Life Insurance Society)

F. 1965—M. 30,000

Local Clubs: 222

**Woodmen Rangers**

(Organization of boys to age 16, sponsored by Woodmen of the World Life Insurance Society)

F. 1965—M. 46,000

Local Clubs: 410

**Zonta International**

(Executive women in business and professions)

F. 1919—M. 20,000

Local groups: 550

In addition to the organizations listed above, there is the broad group of college and university fraternities and sororities. Most of them have definite religious overtones, such as belief in God, etc. Secondly, most of the fraternities and sororities do not have actual integration, whether the group is white, black or yellow race oriented. By practice, the members of the great majority of the groups do select their membership and associates on a bond of common race, regardless of the color.

Because of these factors, and further, in order to not unduly lengthen this brief, we have not listed the fraternities and sororities individually. Our research has revealed, however, that there are some 63 Green letter fraternities, with 4,880 local groups and a total membership of 2,382,000. In addition, there are 3,297 alumni groups, the total membership of which is not available.

There are 37 sororities, with 3,258 chapters and a total membership of 1,403,000. Surprisingly, these sororities more alumni chapters than active chapters, with a total of 6,159 alumni groups. Total membership of alumni groups was not determined.

Honorary societies or associations are not listed, but they seem to be largely selected on the basis of sex membership requirements, as well as attainment in a particular field.

Youth organizations such as Boy Scouts, Girl Scouts, Camp Fire Girls, Boys Clubs, Girls Clubs, National Association of Colored Girls Clubs, and similar groups, although having religious overtones (*i.e.*, belief in God—prayer, etc.), as well as selected membership based upon sex, have also not been included. There are youth organizations of every religious denomination and with racial qualifications of every race.

We could not determine the number of members or groups, or the membership practices or rules of such militant organizations as the Black Panthers, Minutemen, Silver Shirts, etc., so they are not included.

Purely local clubs and organizations are not included, but they must run into the hundreds of thousands through-

out the United States. Our research did not disclose any source of information as to these purely local clubs or organizations. It is known that such groups encompass many varied activities, such as golf and country clubs, bridge and chess clubs, garden clubs, tennis clubs, polo clubs, yacht clubs, athletic clubs and others of varied private nature.

From the information available, it would appear that there are 56,555,000 members of the organizations listed above. If you add the Greek letter fraternities and sororities and the youth groups, there would be approximately another 16,400,000 members, for a total of 72,955,000.

## CONCLUSION

All Americans of all races, creeds, color or national origin have been enjoying to the fullest extent the fundamental inherent and natural human right of privacy and selection of their own social associations. This right existed long before the Constitution was enacted, and is preserved and protected from any legislative or judicial erosion by the First Amendment.

It is not the function of government to enter into the essentially private and social affairs of its citizens, regardless of the purpose of such intrusion. To allow such intrusion would work a great injustice upon all citizens. In the area of "social rights", the Constitution enjoins the legislative and the judicial branches of the government to preserve them inviolate for all to enjoy.

The reversal of the judgment below and the dismissal of the complaint on the grounds that it did not state a

claim upon which relief could be granted is indicated from the facts herein presented and the law as set forth in appellant's brief.

Respectfully submitted,

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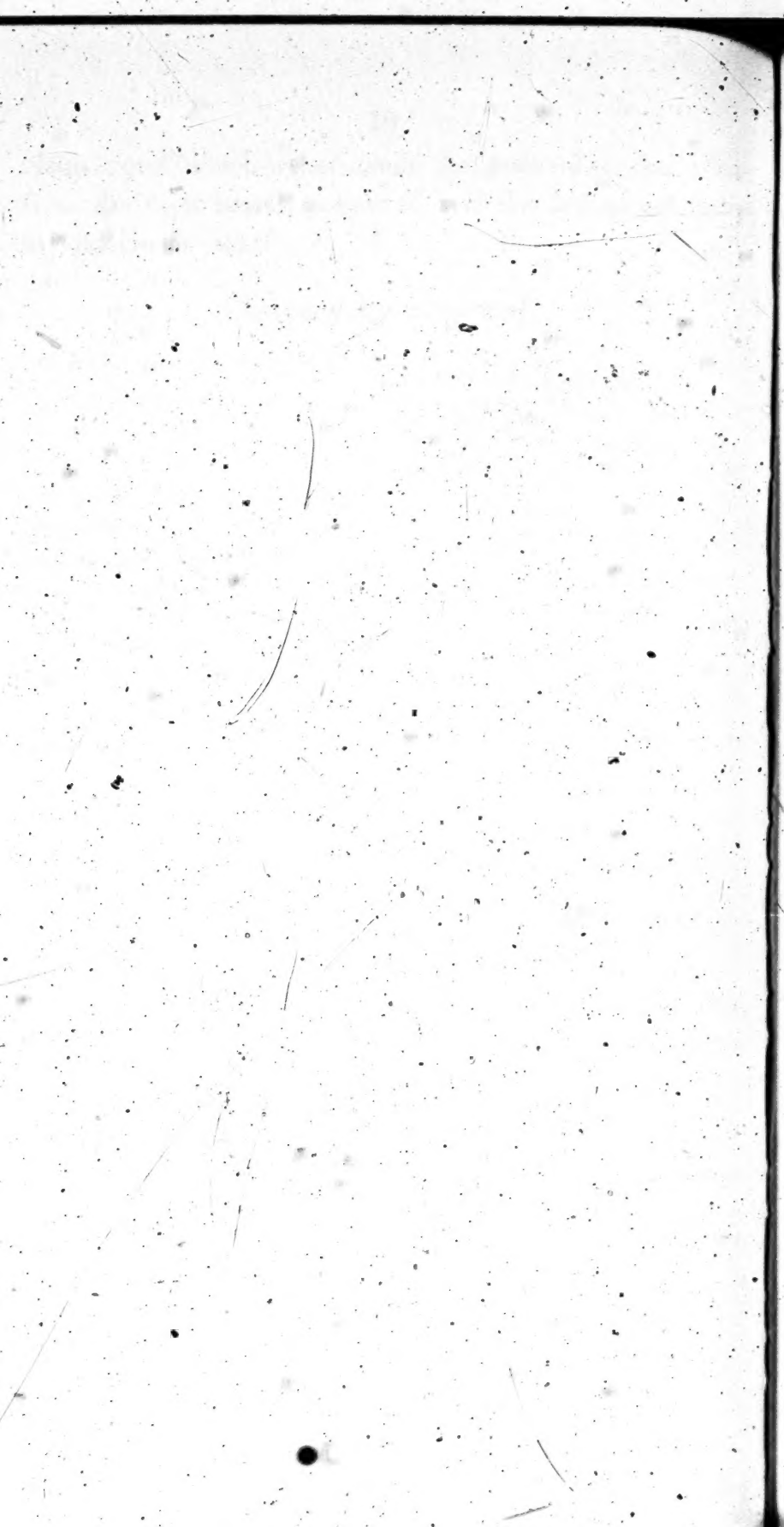
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E. ROBERT SEAYER, CLERK

IN THE  
Supreme Court of the United States

OCTOBER TERM, 1971.

No. 70-75.

MOOSE LODGE NO. 107,

*Appellant,*

*v.*

K. LEROY IRVIS, ET ALS.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA.

**OBJECTION OF APPELLEE K. LEROY IRVIS TO  
MOTION OF BENEVOLENT AND PROTECTIVE  
ORDER OF ELKS OF THE UNITED STATES  
OF AMERICA FOR LEAVE TO FILE  
BRIEF AMICUS CURIAE.**

Rule 42(2) of this Court states that a brief *amicus curiae*, filed with consent of the parties, must be presented within the "time allowed for the filing of the brief of the party supported."

Consent for the filing of a brief *amicus curiae* by the Benevolent and Protective Order of Elks of the United States of America (Elks) was requested in a letter from its

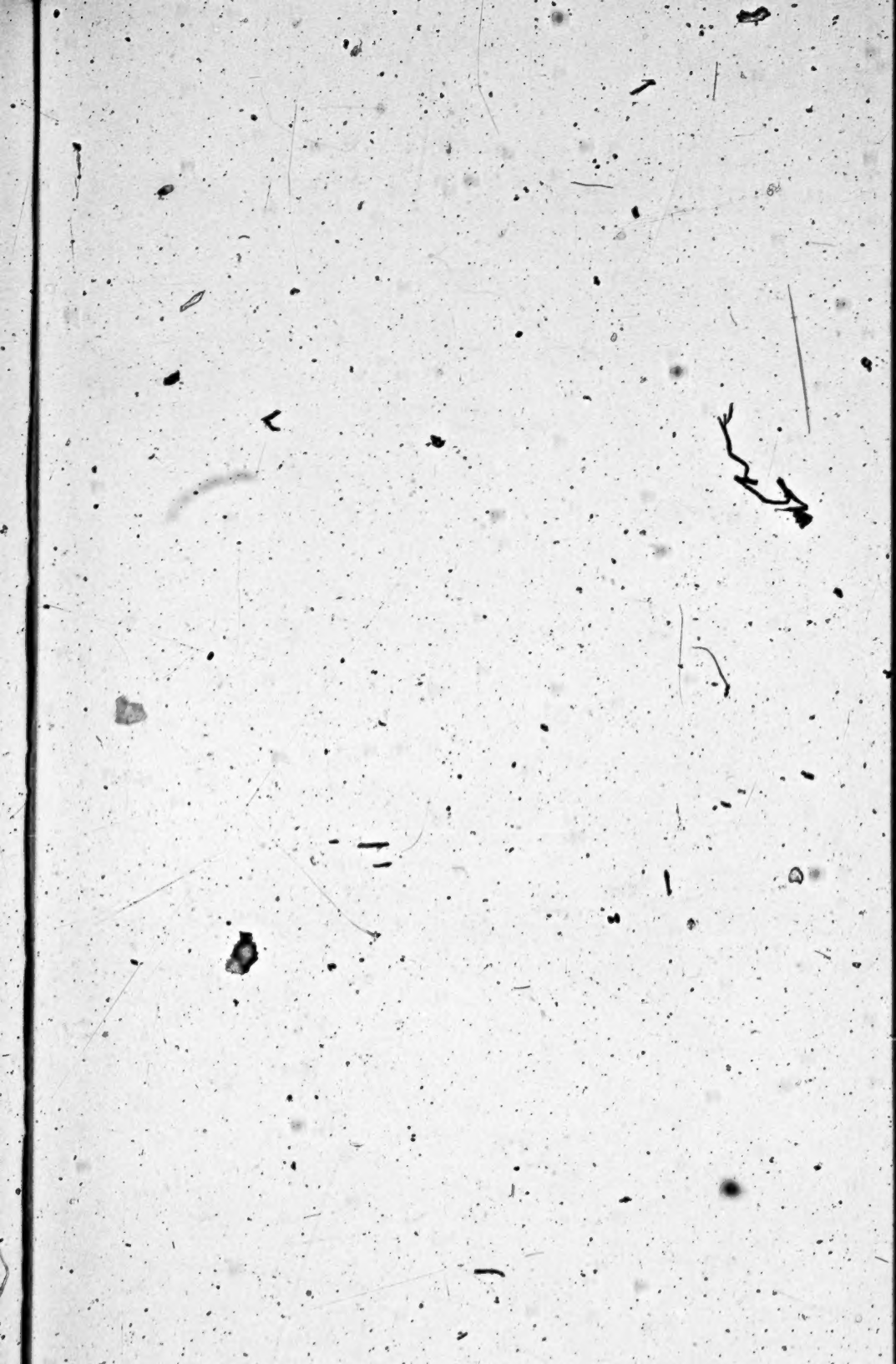
counsel to counsel for Appellee Irvis dated July 22, 1971; and received July 26, 1971. Counsel for Irvis immediately replied withholding consent and noting that the last date for filing with consent was June 25, 1971, the date on which Appellant, Moose Lodge's, brief was filed.

Because of this violation of the Court's rule, a violation which effectively prevents Irvis, in his brief, from considering any of the matters presented by the Elks, consent was withheld. For this reason Irvis believes the Elks' motion should be denied. Irvis notes, in addition, that the extensive listing of organizations in the proposed brief of the Elks is unaccompanied by any statements of organizational purposes, thus making the list totally unhelpful in considering the present case.

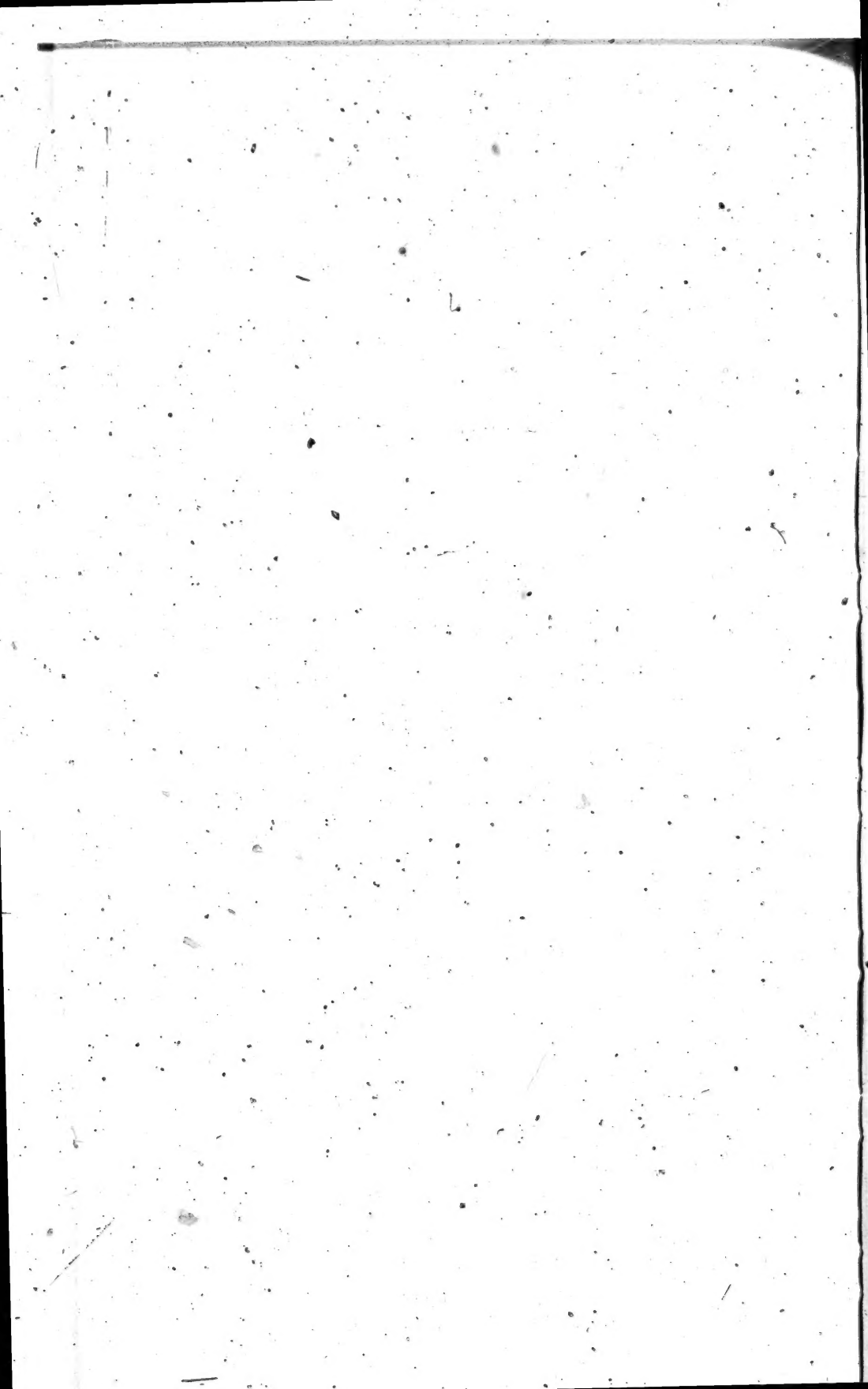
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*Counsel for K. Leroy Irvis.*

September, 1971







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**No. 70-75.**

**MOOSE LODGE NO. 107,**

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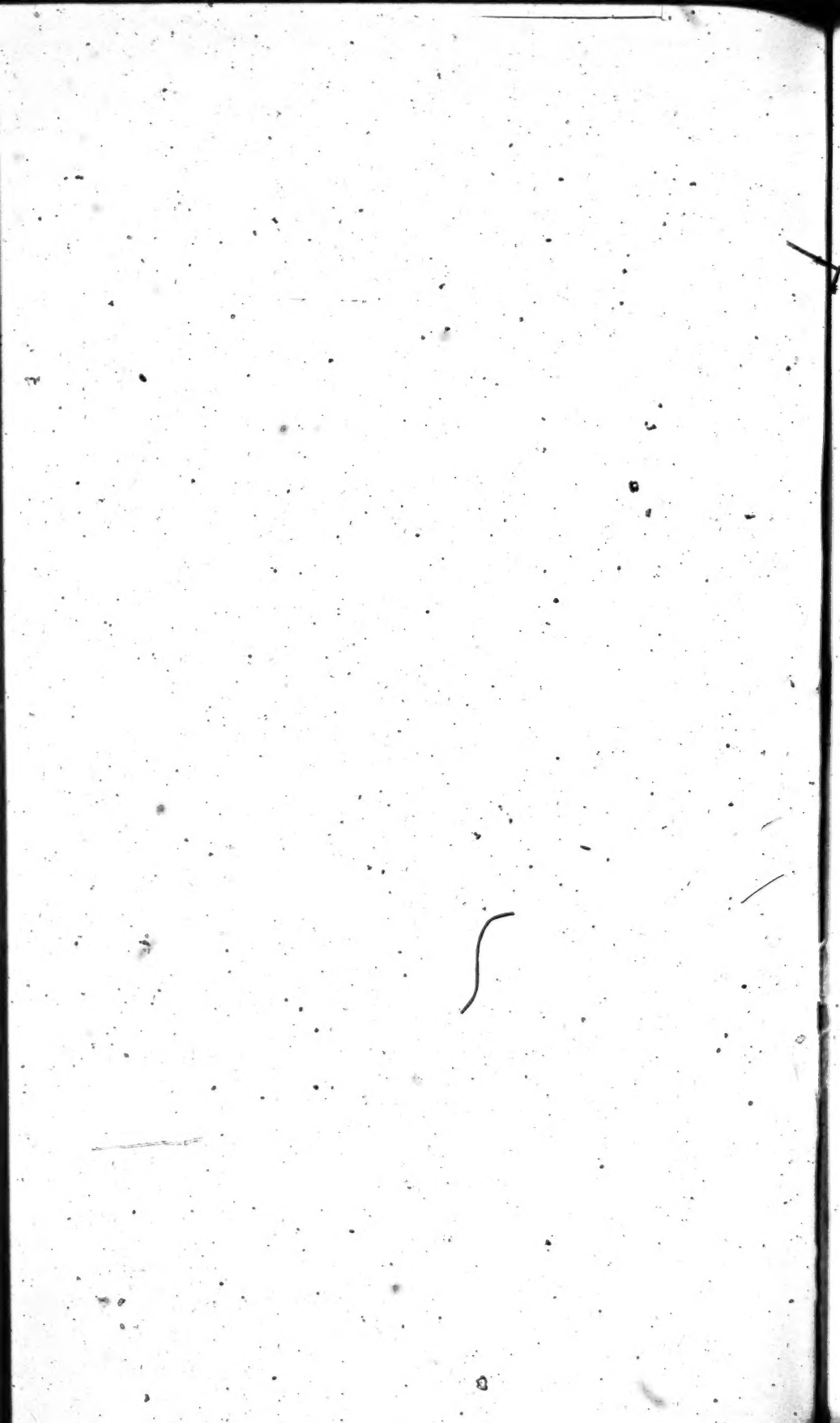
**K. LEROY IRVIS, et als.**

**On Appeal From the United States District Court  
for the Middle District of Pennsylvania.**

**BRIEF FOR APPELLEE, K. LEROY IRVIS.**

**HARRY J. RUBIN,  
LIVERANT, SENFT AND COHEN,  
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*Counsel for K. Leroy Irvis.*



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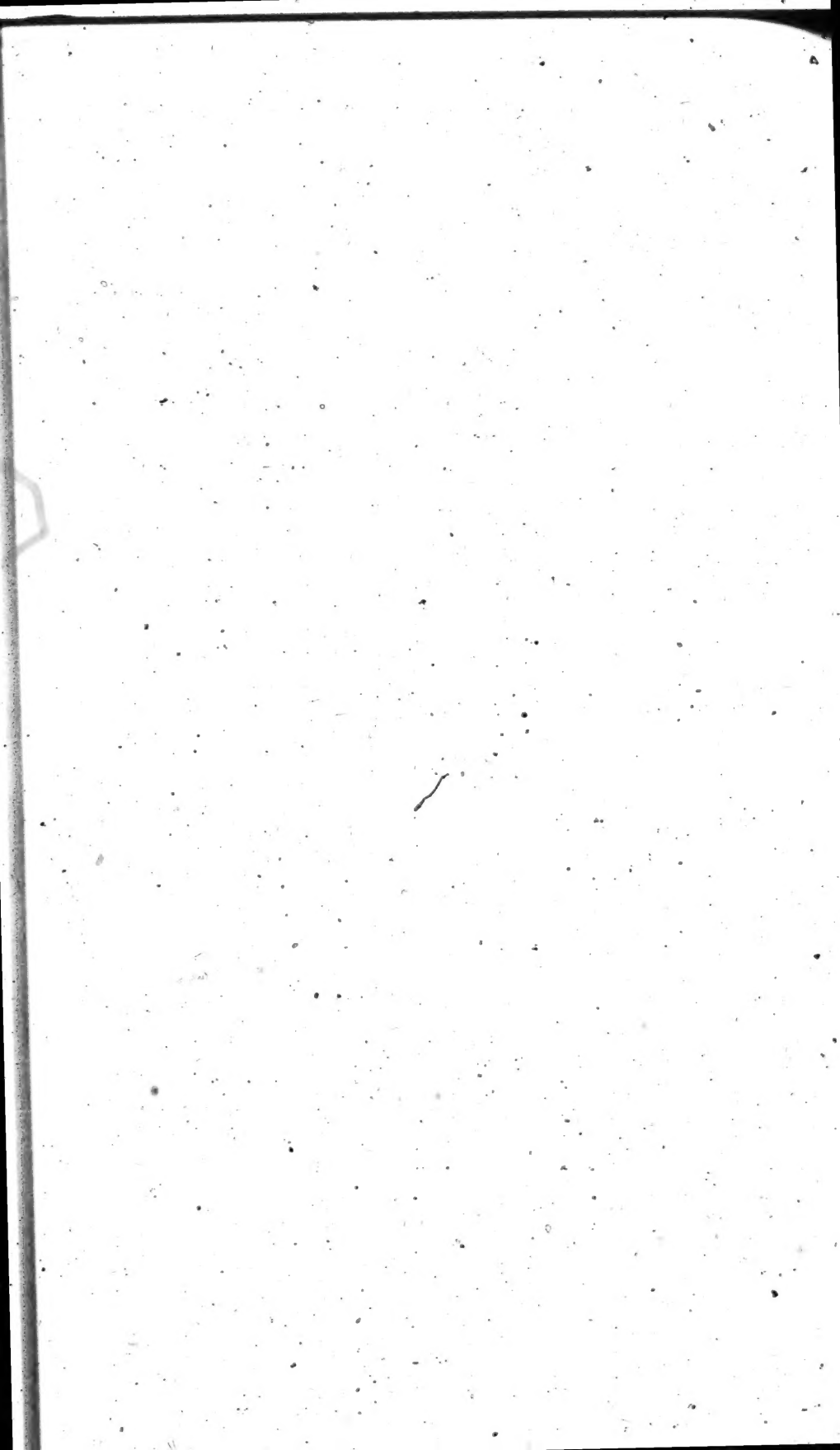
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**BRIEF FOR APPELLEE, K. LEROY IRVIS.**

**STATUTES INVOLVED.**

Moose Lodge has set forth most of the constitutional provisions, statutes and regulations involved. For the sake of completeness we here recite the language of Section 1343(3) of Title 28, United States Code:

“§ 1343. Civil rights and elective franchise

“The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(3)- To redress the deprivation, under color of any State law, statutes, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States; . . .”

**QUESTIONS PRESENTED.**

1. Has Irvis, in alleging that the Pennsylvania Liquor Code, as applied by the Pennsylvania Liquor Control Board, violated the Fourteenth Amendment, in requesting declaratory and injunctive relief restraining the Liquor Control Board in the enforcement and execution of the Liquor Code as applied and in seeking relief designed to redress the deprivation of his right not to be denied the equal protection of the laws without infringing upon any right of private persons to associate freely among themselves (a) stated a cause of action within the jurisdiction of a three-judge federal court under 28 U. S. C. § 1343(3) and 28 U. S. C. § 2281 and, hence, within the jurisdiction of this court on direct appeal under 28 U. S. C. § 1253 and (b) presented and maintained a case or controversy subject to determination by the exercise of judicial power under Article III of the United States Constitution?

2. Does the Pennsylvania scheme of alcoholic beverage control as established by the Pennsylvania Liquor Code, insofar as it involves the issuance of a liquor license to a private fraternal organization whose membership and facilities are limited to white males who are not married to anyone other than white females, whose use of that license is subject to extensive regulation pursuant to the provisions of the Pennsylvania Liquor Code and the regulations of the Pennsylvania Liquor Control Board promulgated thereunder and whose purposes and activities are materially benefited by the possession and use of such license, constitute state support for the racially discriminatory practices of the club in violation of the Equal Protection Clause of the Fourteenth Amendment?

3. Did the court below, in directing termination of the club liquor license held by the Moose Lodge and in enjoin-

ing the Pennsylvania Liquor Control Board from reissuing a license to the Moose Lodge as long as it continued its racially discriminatory practices, fashion a remedy appropriate and proper to the facts presented and legal principles decided in the case?

4. Has an action for redress of the deprivation of the constitutional right to equal protection of the laws, brought pursuant to 42 U. S. C. § 1983, been precluded or limited in any way by enactment of Title II of the Civil Rights Act of 1964 which provides for injunctive relief against discrimination in places of public accommodation?

**STATEMENT.**

This action was brought by K. Leroy Irvis (Irvis) pursuant to 42 U. S. C. § 1983 for the redress of the deprivation of his right not to be denied the equal protection of the laws by the Pennsylvania Liquor Control Board (Board) and Moose Lodge No. 107, Harrisburg, Pennsylvania (Moose Lodge), acting under color of law (A. 3). Irvis sought declaratory and injunctive relief on the ground that the Pennsylvania Liquor Code (Liquor Code), Act of April 12, 1951, Pamphlet Laws 90, as amended, 47 Pa. Stat. Ann. §§ 1-101 to 9-902, pursuant to which the Moose Lodge was the holder of a private club liquor license, violated the equal protection clause of the Fourteenth Amendment (A. 7, 8).

On December 29, 1968, Irvis, a Negro citizen of the United States, entered the premises of Moose Lodge and requested service of food and beverage (A. 6). Solely because he is a Negro, he was refused service (A. 6).

Moose Lodge, a Pennsylvania non-profit corporation (A. 28), is a member lodge of the Loyal Order of Moose and is governed by the constitution and by-laws of the Loyal Order of Moose (A. 20, 21). One of these governing provisions restricts membership in Moose Lodges to any white male who is not married to anyone except a white female<sup>1</sup> (A. 21). Thus, neither Irvis nor any other Negro may become a member of a Moose Lodge and enjoy any of the benefits or participate in any of the activities of a Moose Lodge even though he may meet all other qualifications for membership (A. 21, 23). The sole fact of being a Negro bars him (A. 23).

Moose Lodge is a benevolent and fraternal organization whose purposes also are set forth in the Constitution of the Loyal Order of Moose. These purposes encompass a variety

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1. *E.g.*, A white American male married to a Japanese female is ineligible.

of praiseworthy objectives of a fraternal nature, including the objective "to encourage tolerance of every kind." (A. 22). The accomplishment of these objectives by common action is limited to white persons (A. 22).<sup>2</sup>

Moose Lodge is a "private club" within the common meaning of that term. Membership is restricted and can be attained only through a process of invitation, application, investigation and secret voting (A. 23). The social activities carried on in the club are open only to members or their properly invited guests (A. 23, 24). In the second sentence of paragraph 4(a) of the Stipulation agreed to by the parties (A. 23) a partial equation is made between these activities and those carried on in the home. Fairly read, this sentence indicates that members of Moose Lodge eat, drink, converse, watch television, play cards, etc., at the Lodge home similar to the way individuals eat, drink, converse, watch television, play cards, etc., in their own home. This similarity is subject, however, to several major qualifications. For one, a member may not freely enter another member's home (i.e. without invitation), although he may freely enter the Lodge home (A. 23). For another, no member must obtain any license from the Board in order to carry on any activities in his home whereas a liquor license is necessary in order to drink at the Lodge home (A. 23). A third difference, although not specifically referred to in the stipulated sentence, is that the drinking of alcoholic beverages in a member's home is not a purchase and sale transaction; while at the Lodge home members acquire alcohol only by purchasing it by the drink.

Moose Lodge conducts its activities in its own building (A. 24). It received no public funds in connection with the

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2. A full statement of these purposes is contained in footnote 2 of the opinion of the court below (A. 23).



construction of this building or in connection with any of its other activities (A. 24). It conducts no publicly-associated activities (A. 24, 25).

Moose Lodge is also a "club" within the statutory definition contained in the Liquor Code (A. 6). This definition (A. 15) supports the concept of "private club" described above and is limited to organizations which do not maintain quarters open to the public.

Because it qualifies as a club under the Liquor Code, Moose Lodge is entitled to and has received a club liquor license from the Board (A. 6, 25). The grant of such a license is made pursuant to the specific authority of the Liquor Code<sup>3</sup> (A. 4, 25). Once having received such a license, Moose Lodge is thereby entitled to purchase liquor from a state liquor store, to keep liquor at the Lodge home and to sell liquor (as well as malt or brewed beverages) to members for consumption at the Lodge home (A. 4, 25). The importance of this license to the Moose Lodge is reflected in the agreements of the parties that the receipt and ownership of the license by Moose Lodge is a "valuable privilege" (A. 4, 25) and that the loss of this license would cause Moose Lodge to lose membership and would impair its capability to carry out its benevolent purposes and to contribute to the purposes of the Supreme Lodge (A. 19, 20, 25).

The Board is an agency of the Commonwealth of Pennsylvania charged with responsibility for supervising the

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3. Henceforth all references to this statute simply will be to the "Liquor Code" or to a specific section of the Liquor Code. All official section numbers in the Pamphlet Laws are ascribed the same number in Purdon's Pennsylvania Annotated Statutes, Title 47, except that the Latin article number contained in the Pamphlet Laws precedes (in arabic numeral form) the official section number. Hence, section 404 of Article IV of the Liquor Code becomes section 4-404 of Title 47 of Purdon's.

All references to specific sections of the Liquor Code will refer to the appropriate page of Appendix F to the Jurisdictional Statement.

administration and conduct of Pennsylvania's comprehensive alcoholic beverage control system (A. 3, 4, 25). This system is provided for and governed by the Pennsylvania Liquor Code (A. 4, 25). The Liquor Code is a plenary statutory enactment dealing with all aspects of the manufacture, possession, sale, consumption, importation, use, storage, transportation and delivery of alcoholic beverages in Pennsylvania and of the licensing of individuals and organizations with respect to such activities (A. 4, 25).

Included among the Code's provisions are sections granting extensive regulatory authority to the Board to carry out the statutory mandate. Section 207, subsection (i) (p. 15), contains a general grant of power to regulate and states that the Board's regulations "shall have the same force as if they formed a part of this act." Section 208, subsection (h) (p. 16), provides specific regulatory power over the "issuance of licenses" and the "conduct, management, sanitation and equipment of places licensed. . . ."

The Liquor Code and the Board's regulations contain a variety of requirements which must be met by a private club to receive a liquor license (A. 5, 25) and which govern the conduct of licensees (A. 5-6, 25). However, nothing in the Liquor Code or in the Board's regulations contains any requirement, restriction or regulation regarding the issuance of a license to a private club licensee which discriminates on racial grounds; and the Board has no power to consider the racially discriminatory practices of a private club in its exercise of authority (A. 6, 25).

In addition, licenses (both for the sale of liquor and malt or brewed beverages) are not freely available throughout Pennsylvania for two reasons. First, Pennsylvania follows a policy of local option; and § 472 of the Liquor Code (pp. 61-62) prohibits the granting of licenses (including club licenses) unless a majority of voting electors of the

local municipality vote in favor of doing so. This limited form of "prohibition" does not affect what one can or does do in his own home, however, because anyone over the age of twenty-one years may purchase liquor or wine at a state store or beer from a distributor, take it to his home, and consume it there even if his home is in a "dry" locality. The restrictions in section 472 are on the granting of licenses and the establishment of state stores.

Second, Pennsylvania imposes a maximum quota on the number of licenses which may be granted in any municipality which has voted in favor of granting them. Section 461 of the Liquor Code (pp. 50-52) provides that not more than one license shall be granted for each fifteen hundred inhabitants in any municipality.<sup>4</sup> However, the count does not include club licenses until the quota is otherwise actually filled, thus imposing a curious form of monopoly on the system. This feature, as well as other aspects of Pennsylvania's liquor control system, will be discussed in greater detail in the body of Irvis' argument.

Alleging that Moose Lodge and the Board, acting under this state-wide, statutorily-mandated scheme of licensing, regulation and monopoly, insofar as it caused club liquor licenses to be issued and renewed to private clubs which discriminated against Negroes in their facilities, services and privileges, had violated his right to the equal protection of the laws as guaranteed by the Fourteenth Amendment, Irvis sought declaratory and injunctive relief (A. 7-9). Because the core of Irvis' complaint necessarily involved a question of the constitutionality of the Liquor Code as applied, Irvis requested that a three-judge district court be convened, pursuant to 28 U. S. C. §§ 2281 and 2284 (A. 7).

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4. The "Quota Law," Act of June 24, 1939, Pamphlet Laws 806, 47 Pa. Stat. Ann. §§ 744-1001 to 744-1003, does not affect club licenses. It applies only to a limited number of older hotel licenses.

Agreeing that the action involved the enforcement, operation and execution of a state statute, the district judge to whom the application was presented notified the chief judge of the circuit who designated the two additional judges to hear the action (A. 9-10).

Both defendants moved to dismiss the action for failure to state a claim (A. 11-12). Following denial of these motions (A. 12-13), the Moose Lodge and the Board filed answers (A. 14-20). All parties then filed stipulations of facts (A. 20-26, 28-29). Irvis moved for summary judgment (A. 27).

The court below first noted that racial discrimination was both required by the Constitution of the Supreme Lodge and practiced by the local Moose Lodge (A. 33). It referred to the unique nature of the power exercised by the sovereign over the sale, possession and use of intoxicating liquor and the consequent inherent difference between the regulation involved in granting a liquor license and that involved in the granting of other forms of licenses (A. 34).

After reviewing the nature and extent of Pennsylvania's exercise of authority over the alcoholic beverage field, the court concluded (A. 37):

"It would be difficult to find a more pervasive interaction of state authority with personal conduct . . .

The unique power which the state enjoys in this area, which has put it in the business of operating state liquor stores and in the role of licensing clubs, has been exercised in a manner which reaches intimately and deeply into the operation of the licensees."

It went on (A. 38):

"Here the state has used its great power to license the liquor traffic in a manner which has no relation to the

traffic in liquor itself but instead permits it to be exploited in the pursuit of a discriminatory practice."

Thus finding state support and encouragement of Moose Lodge's racial discrimination, the court held (A. 40) that the grant of a liquor license to Moose Lodge was in violation of the equal protection clause of the Fourteenth Amendment.

The court subsequently entered a final decree so holding, directing termination of Moose Lodge's license and enjoining the Board from reissuing a license to Moose Lodge as long as Moose Lodge continued its policy of racial discrimination (A. 41-42).

Moose Lodge moved to modify this decree (A. 42-44). In essence, it asked that the court below allow it to continue its racially discriminatory membership policies but to require it to serve non-Caucasians who are brought to the Lodge's home as guests of members whenever guests "may be invited." (A. 43).<sup>5</sup>

Irvis opposed this motion (A. 44-47). He pointed out that this proposed modification would not eliminate state support for Moose Lodge's racial discrimination since the "service of liquor under the privilege granted by the club liquor license is inextricably interwoven with the privileges of membership in Defendant Moose Lodge" (A. 46).

The motion to modify was denied (A. 48). Moose Lodge filed a timely notice of appeal (A. 2). It also filed a motion for a stay which was granted (A. 2).

Following Moose Lodge's docketing of its appeal in this Court and Irvis' filing of a motion to affirm, the Court postponed probable jurisdiction to the hearing of the case on the merits.

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5. This proposal is discussed more fully below in part I.B of this brief.



## SUMMARY OF ARGUMENT.

I. Solely because he is a Negro, Irvis was subjected to an act of racial discrimination by Moose Lodge. This act deprived him of rights secured to him by the Fourteenth Amendment to the Constitution because Moose Lodge is the holder and beneficiary of a Pennsylvania club retail liquor license granted to it by the Pennsylvania Liquor Control Board acting pursuant to provisions of the Pennsylvania Liquor Code.

A. Seeking redress for this deprivation of his rights, Irvis brought this action under 42 U. S. C. § 1983. In his complaint he sought relief declaring that the Pennsylvania Liquor Code, as applied, was unconstitutional in requiring the issuance and renewal of a liquor license to a private club such as Moose Lodge which engages in invidious racial discrimination. He also sought injunctive relief requiring the Board to revoke and not to renew the license of Moose Lodge and to issue regulations barring the issuance and renewal of club liquor licenses to other organizations which engaged in racial discrimination.

Because Moose Lodge's act of racial discrimination constituted State action and was committed by Moose Lodge with support from the Pennsylvania Liquor Code, Irvis properly stated a cause of action under 42 U. S. C. § 1983; and the District Court had jurisdiction under 28 U. S. C. § 1343(3). *United States v. Price*, 383 U. S. 787; *Adickes v. S. H. Kress & Company*, 398 U. S. 144.

In addition, because Moose Lodge's racial discrimination drew its support from the application of statutory provisions, Irvis called into question the validity of that statute, alleging that it was in conflict with provisions of the Fourteenth Amendment to the Constitution. Because of this and because Irvis requested an injunction restraining

the enforcement, operation or execution of the Pennsylvania Liquor Code by restraining the action of the Pennsylvania Liquor Control Board in its enforcement or execution of this statute, the convening of a three-judge district court was requested. 28 U. S. C. § 2281. Both the district judge to whom his request was presented and the chief judge of the Court of Appeals for the Third Circuit agreed with Irvis, and a three-judge district court was convened.

All of the elements required to convene a three-judge district court are present here. Irvis alleged the unconstitutionality of the Pennsylvania Liquor Code, as applied. *Turner v. Fouche*, 396 U. S. 346. He sought injunctive relief against officers of the Commonwealth of Pennsylvania having state-wide jurisdiction in their enforcement of this statute. Although he made specific reference to the discriminatory actions of Moose Lodge in order to clarify the issues, Irvis' constitutional challenge clearly extended to all similar situations. The requirement that a three-judge district court be convened in such a case recently has been recognized by this Court in proceedings brought to challenge application of provisions of a federal statute. *Flast v. Cohen*, 392 U. S. 83.

Since the court below granted injunctive relief, the appeal from its action was properly taken to this court. 28 U. S. C. § 1253.

No liquor licenses can be granted or renewed in Pennsylvania except pursuant to the provisions of the Pennsylvania Liquor Code. The Code is a comprehensive state enactment by which Pennsylvania exercises virtually plenary control over all aspects of the manufacture, importation, sale and disposition of alcoholic beverages within Pennsylvania. It does this through the medium of the Liquor Control Board, a duly constituted administrative agency of the Commonwealth of Pennsylvania.

The Liquor Code grants to the Board authority to issue liquor licenses to various types of licensees, including clubs. The conditions under which licenses are to be granted and renewed are specified in great detail in the Liquor Code; none of these conditions relate in any way to the practice of racial discrimination by a club licensee. The Board has no power to refuse to issue or renew or to revoke or suspend any license because of racial discrimination practiced by a licensee; consequently, only the validity of the Liquor Code itself, as applied, and not its administration by the Board is properly called into question here. For this reason a three-judge court was required, and the appeal is properly before this Court.

B. While agreeing that Irvis properly stated a cause of action requiring the convening of a three-judge district court, Moose Lodge, nevertheless, now takes the position that Irvis has presented no case or controversy subject to judicial determination. It takes this position despite the fact that Irvis has maintained a consistent position throughout the proceeding. He has sought to redress the deprivation of his rights as a Negro citizen by requesting severance of the relationship between the State and Moose Lodge, leaving Moose Lodge free, if it so desires, to continue to discriminate on racial grounds and removing the State from participation in this discrimination.

But Moose Lodge characterizes this position as one which only seeks to "punish" Moose Lodge and one in which Irvis has no more interest than any other citizen of Pennsylvania. Apparently Moose Lodge is claiming either that Irvis is seeking an advisory opinion or has no standing to maintain this action. These arguments completely overlook the facts that Irvis has been discriminated against on racial grounds, that the discrimination constitutes State action and that the most appropriate relief under such cir-

cumstances is to eliminate the State action and leave the private club free to discriminate. Irvis is not just any citizen; he is *the* citizen against whom the discrimination was practiced; and he has a right to seek redress by asking that the State's support for the discriminatory practices of Moose Lodge be terminated.

The issue is really one of "justiciability," a doctrine on which the Court has recently commented, *Flast v. Cohen*, 392 U. S. 83, in connection with its review of the issue of standing. Its purposes are to limit the business of the courts to adversary proceedings and to enforce the separation of governmental powers. As it reflects on the issue of standing, it suggests the question of whether or not a complainant is a proper party to seek resolution of an issue in the courts.

By all standards this case presents a justiciable controversy. Irvis has been injured. He has been injured not just because Moose Lodge practiced racial discrimination but because it did so with the support of the State. He seeks redress for his injury by requiring the State to withdraw its support, and he has chosen to do so by asking the court to act in accordance with powers conferred upon them by law in a traditional adversary context. The case involves no question of separation of governmental powers, no political question and raises no question of mootness. Irvis, who seeks to insure that private clubs holding State-granted liquor licenses afford equal membership opportunity to all citizens of Pennsylvania and that those who choose not to afford such opportunity do not hold liquor licenses, does so because of the personal injury suffered by him as a result of the existing situation. No clearer case or controversy could exist.

Moose Lodge's complaint that its motion to modify the decree should have been accepted by both Irvis and the

court below is misplaced. This modification only would have allowed Irvis to enter the premises of Moose Lodge if he were invited to do so by a member. It would give to Irvis no particular rights, and it would in no way eliminate the State's support for Moose Lodge's racial discrimination. Indeed, in view of the fact that the Loyal Order of Moose has recently amended its general laws to restrict the admission of guests to Lodge premises to persons "who are eligible for membership in the Fraternity," a restriction which effectively eliminates all Negroes as guests, this particular objection voiced by Moose Lodge is difficult to understand.

Since Irvis brought and maintained a controversy subject to the jurisdiction of a three-judge federal district court and to this Court on appeal, the merits of his case must be reached.

II. No State may conduct itself in such a way that it commands or supports or encourages or becomes involved in the invidious racial discrimination of a private party. This is a protection afforded to all persons by the Fourteenth Amendment. It applied to all forms of state involvement, direct or indirect, central or peripheral. *Civil Rights Cases*, 109 U. S. 3, *United States v. Guest*, 383 U. S. 745. The practice of racial discrimination by private organizations such as Moose Lodge may well be an unfortunate consequence of the right of private persons to be prejudiced; but when such a private organization calls upon the State to provide it with the type of support received from the possession and use of a state liquor license and to become involved in the regulation of its affairs as a result thereof, the effect can only be to breed suspicion in government. For this reason the state action doctrine condemns such state support and involvement.



A. Here, Pennsylvania's involvement is extensive; and its support is marked. Through its Liquor Code, Pennsylvania exercises plenary authority over all aspects of the field of alcoholic beverages. No club may sell alcoholic beverages to its members unless it holds a state liquor license. In order to obtain such a license, it must follow the provisions of the Liquor Code with precision. These provisions are highly detailed, and they impose a variety of requirements upon all applicants for licenses. Certain of these requirements have special application to club applicants. A license, once granted, must be renewed annually.

The Liquor Code contains several provisions restricting the issuance of licenses generally. One of these provisions forbids the issuance of any licenses in a municipality unless the electors of that municipality have approved the granting of licenses. Another provision, moreover, limits the number of licenses which may be issued in any municipality where the electors have voted in favor of the granting of licenses. The presence in the Liquor Code of these "local option" and "quota" provisions effectively restricts the number of licenses which may be granted and imparts a certain franchise value to all existing licenses.

To support these and the multitude of other permissive and regulatory provisions of the Liquor Code, the Liquor Control Board is given power to promulgate and enforce regulations. Its regulatory powers are co-extensive with the provisions of the Liquor Code; and its regulations, read in conjunction with the Code, evidence the existence of a unique and far-reaching state regulatory system. In a sense it may be said that the State is a "partner" of every licensee.

The situation is totally different from that which exists in connection with what we usually think of in terms of state-granted licenses. Most licenses are granted to enforce standards of health and safety or to provide a central record

of business or other activities or to give evidence that a person has met certain business or professional standards. All of these are for the benefit of the public; none of them involves regulatory authority as extensive as that present in Pennsylvania's alcoholic beverage control system; and none of them brings to the possessor the special financial benefits that accrue to the possession and use of a liquor license.

For the liquor license granted by the State of Pennsylvania to Moose Lodge is a mainstay of Moose Lodge's financial well-being. In an area of activity in which the State could have chosen not to grant any liquor licenses to private clubs at all, *Crowley v. Christensen*, 137 U. S. 86, Pennsylvania has chosen to provide Moose Lodge with economic benefits. Several factors contribute to this. First, as already noted, licenses are not freely available; and the holder of a license is a participant in a closed system. Second, Moose Lodge, as the holder of a license, may purchase liquor from Pennsylvania State Liquor Stores at wholesale prices, unlike Irvis and other individuals who must pay full retail prices at these stores. Third, after having purchased liquor at wholesale prices, Moose Lodge sells it to its members as an income-producing activity, unlike Irvis and other individuals who are forbidden to sell liquor which they purchase at Pennsylvania Liquor Stores. Fourth, Moose Lodge, and other private clubs, are allowed to sell alcoholic beverages during hours at which no other licensees may sell them. Only private clubs may sell on Sunday in the same way that they can sell on weekdays, and only private clubs may sell on election days. In addition, private clubs are not restricted, as are all other licensees, with respect to the percentage of food sales which they must have before they can sell at all on Sunday.

Finally, and most important, the record is clear that without the liquor license Moose Lodge would lose member-

ship and find it more difficult to carry on its fraternal purposes and activities. This clearly-stated expression of the direct financial value to Moose Lodge of the liquor license conferred upon it by the State, perhaps more than any other single factor, illustrates the major importance of the license to Moose Lodge and of the State support which it reflects. The benefits realized by Moose Lodge are substantial, and they flow directly and immediately from its possession and use of the license.

Moreover, the Commonwealth of Pennsylvania benefits from the relationship as well. While it is not as dependent on the return to it from a single licensee as Moose Lodge is on the possession and use of its single license, the Commonwealth nevertheless receives funds from Moose Lodge through the latter's purchase of liquor at Pennsylvania State Stores and payment of license fees. Since Pennsylvania realizes substantial sums annually from the operation of its alcoholic beverage control system, it cannot be said that the benefits received by it are only incidental.

B. All of these factors result in a situation in which Pennsylvania has become significantly involved in the racial discrimination practiced by Moose Lodge. This is precisely the "state action" which the Fourteenth Amendment forbids.

The central inquiry in all situations like this one focuses on what the State has done, not on the nature of the private discriminating party or the activity carried on by it. The cases are at one in illustrating this conclusion. They have attempted to determine, e.g., whether the State has "commanded" discrimination, "supported" discrimination or "encouraged" discrimination. *Peterson v. City of Greenville*, 373 U. S. 244; *Lombard v. Louisiana*, 373 U. S. 267; and *Robinson v. Florida*, 378 U. S. 153. They have attempted to determine if the various indicia of state involvement are

sufficient to create a situation of mutual benefit between state and private party. *Burton v. Wilmington Parking Authority*, 365 U. S. 715. They have attempted to determine if the State has sanctioned or encouraged discrimination through actions taken by it which support discrimination by private parties. *Reitman v. Mulkey*, 387 U. S. 369.

If state action is present when a State leases premises to a private party which discriminates, as it was in *Burton*, how can it not be present when a State grants a financially beneficial liquor license to a discriminating private party? These relationships create a situation in which the State "must be recognized as a joint participant in the challenged activity" (*Burton v. Wilmington Parking Authority*, 365 U. S. 715). If state action is present where a State provides affirmative support for the private right to discriminate, as it was in *Reitman*, how can it not be present where state law requires the issuance of a liquor license to a discriminating private party free from sanction or interference from the State? In all of these situations the State has done something which supports the discrimination of the private party and/or involves the State in that discrimination; and this is the critical factor which leads to a similar finding of state action here.

We may add to all this the presence and impact of the extensive state regulatory authority over its liquor licensees. This authority itself is sufficient state action to produce a violation of the Fourteenth Amendment in *Moose Lodge's* racial discrimination against *Irvis*. *Public Utilities Commission of the District of Columbia v. Pollak*, 343 U. S. 451. When coupled, however, with the financial support realized by *Moose Lodge* from its possession and use of the liquor license, the existence of this regulatory authority clearly confirms the presence of state action here.

Recently (June 28, 1971) the Court struck down State statutes providing financial aid to private and parochial



schools in Pennsylvania and Rhode Island. *Lemon v. Kurtzman*, 91 S. Ct. 2105. It found that these statutes tended to produce a relationship between State and religion which fostered "excessive entanglement" and that this condition violated the constitutional prohibition against the establishment of religion. We find in this determination an appropriate analogy to the relationship between Pennsylvania and Moose Lodge in which there exists a "substantial involvement" of Pennsylvania in the invidious racial discrimination practiced by Moose Lodge and a resulting violation of the Fourteenth Amendment.

We find no support in the announced principles of the state action doctrine for Moose Lodge's theory that its purely private nature immunizes it here. Whether or not the private discriminating party has "public" attributes or performs a "public" function or receives "public" funds is immaterial to a determination of whether state action is present. In every case there is a "public" aspect in the presence of the State; there may or may not be a "public" aspect to the actions of the private party. Clearly, if Pennsylvania had leased a state-owned building to Moose Lodge or appropriated money directly to Moose Lodge from State funds, state action would be present because of what the State would have done; yet nothing would have changed with respect to Moose Lodge. It would still be a purely private organization carrying on its own private functions. But because of the involvement and support of the State, Moose Lodge's racial discrimination would be state action and would be subject to redress.

C. The court below made a distinction between private clubs which restrict membership on racial grounds and private clubs which do so on religious or ethnic grounds. The distinction, as phrased by the court below, is too broadly worded; but it is, nevertheless, a valid one. The



heart of the distinction lies in the difference between a rational restriction on membership and an irrational one. Where the membership limitation is reasonably related to the valid, good faith purposes and functions of the organization, it is a proper one. On the other hand, if the membership limitation has no rational connection with the purposes and functions of the organization, it is improper and must be invalidated. This is particularly so if the restriction is based on racial grounds.

The test is a simple one: recognizing that a racial limitation is particularly suspect, is the membership limitation involved reasonably related to the actual objects and purposes of the organization. This test has three aspects. First is the special character of racial classifications. The second is the need for the restriction to be reasonably related to the organization's purposes. Third is the requirement that the organization's purposes are stated and followed in good faith. If all of these elements are satisfied, then any discrimination which may be present in the membership limitations cannot be considered "invidious."

We take this to be the real meaning of what the court below was attempting to say. In any event it is what Irvis believes to be the case and what we believe this Court should approve.

III. The decree entered by the court below both gave full and proper effect to its determination that state action was involved in the racial discrimination practiced by Moose Lodge and to any rights of privacy and private association to which the members of Moose Lodge are entitled.

A. Having found state action here, the court below recognized the private nature of the discriminating party and determined that the proper way of handling the situation was to decree a severance of the relationship between

State and Moose Lodge. It did this not by ordering the revocation of Moose Lodge's license but simply by ordering that the license be terminated and cancelled subject to being reissued if Moose Lodge decides to change its racially discriminatory policies.

A decree, such as is suggested by Moose Lodge, that the Court should simply have enjoined the Board from enforcing in full its regulation which requires a club licensee to adhere to all of the provisions of its constitution and by-laws neither is justified by the position announced by the court below (since its decision was not based upon the existence of this regulation) nor is reflective of the purpose of the regulation (which is simply to insure that a private club is, in fact, a club). While Irvis would not object if the decree, *in addition to what it actually contains*, also contained a paragraph enjoining the Board from enforcing this regulation to the extent that it has the effect of seeming to require racial discrimination by a private club licensee, he suggests that a decree which contained no more than this one directive from the Court would be meaningless and dysfunctional with respect to the necessities of the situation.

B. No constitutionally-protected rights of privacy and private association are involved here. These rights have been carefully guarded and preserved by the Court in order to protect free expression of political beliefs and interests and would similarly apply where economic, religious or cultural beliefs and interests are involved. *Bates v. Little Rock*, 361 U. S. 516; *N. A. A. C. P. v. Alabama*, 357 U. S. 449. In these cases state governments have attempted to inquire into the associational aspects of groups expressing dissident political views; and while the Court recognized that a State may have a legitimate interest in making such inquiries, it found none in the situations presented which overrode the right of association.

No case has ever held that the right to possess and use a state-granted liquor license is necessary in order to advance the type of interests and beliefs which lie at the heart of the right of private association. It is unlikely that any case would or should do so. Pennsylvania could, if it so wished, simply solve the present situation by amending its Liquor Code to eliminate all private club liquor licenses. Moose Lodge would then face exactly the same problems as it faces as a result of the decree in this case. In either situation, however, the problems would not arise as a result of some infringement on the right of private association; they would arise because the members of Moose Lodge voluntarily decide that their interests in the right of private association are subordinate to their personal and social interests in obtaining alcoholic beverages. We do not deny that there is pleasure in obtaining a drink at a club bar; we do deny that this pleasure rises to the same constitutional stature as the right of advancing ideas and beliefs through associational activities.

Even were we to assume, for the moment, that some right of private association is here involved, we must still recognize that Irvis has a corresponding right to be free from state-supported racial discrimination. In the cases in which the Court has considered the right of private association, it has always attempted to balance the rights of the individuals involved against the interest expressed in limiting those rights. Here, too, a balancing of interests could be made. Where assertion of the right of private association seeks to advance ideas and beliefs central to the exercise of the rights of free speech and free assembly, such as political advocacy, then the balancing may favor the right of private association regardless of the possible discrimination which may result. Where, however, the right of private association is asserted simply to advance common

social or fraternal interests, the balancing of interests should favor the determination that state-supported racial discrimination must terminate. Only in this way can proper deference be paid to the competing constitutional interests which may be involved.

IV. Moose Lodge argues that Congress, in passing Title II of the Civil Rights Act of 1964 and including an exception for private clubs in that Title, has marked a constitutional boundary between the right of private association and the right to be free from racial discrimination which the Court should apply here. It asserts this position on the basis that the Civil Rights Act of 1964 was a statute enacted to enforce the Fourteenth Amendment.

A. The history of Title II does not support Moose Lodge's argument. When President Kennedy asked Congress to take action in this field, he called attention to the powers of Congress both under the Commerce Clause and the Fourteenth Amendment. When Congress acted in response to this request, its hearings, its reports and its debates all indicate, first, that it did so primarily in reliance on its powers under the Commerce Clause, not the Fourteenth Amendment, and, second, that the exception for private clubs was solely an expression of legislative policy not to deal with discrimination in private clubs through the medium of the provisions of Title II.

When the Court sustained Title II, *Heart of Atlanta Motel, Inc. v. United States*, 379 U. S. 241, it did so as a proper exercise by Congress of its power under the Commerce Clause. It also noted that Congress' powers under the Commerce Clause are plenary and extend to the regulation of private persons where required. These conclusions indicate, just as do the executive and legislative input into



this history, that in excepting private clubs Congress was not reflecting upon its powers under the Fourteenth Amendment and attempting to draw a fine constitutional line between the right of private association and the right to be free from state-supported discrimination. In view of its powers under the Commerce Clause such a line would be unnecessary.

The Court has also indicated that nothing in Title II precludes an action for redress of a deprivation of constitutional rights provided for under 42 U. S. C. § 1983. *Adickes v. S. H. Kress & Company*, 398 U. S. 144. Since this is so with respect to conduct which violates both Title II and § 1983, it would be hard to justify any different conclusion for conduct which is not covered by Title II but which otherwise violates 42 U. S. C. § 1983, as is present here.

B. We have already noted that the Commerce Clause gives to Congress the power to act with respect to private persons and groups completely apart from the state action restriction imposed by the Fourteenth Amendment. The Commerce Clause is not the sole source of such Congressional power, however.

The Thirteenth Amendment, in its abolition of slavery, is self-executing. *Civil Rights Cases*, 109 U. S. 3; *Jones v. Mayer Co.*, 392 U. S. 409. In addition, the Thirteenth Amendment gives enforcement power to Congress. In exercising such power, Congress may pass all laws necessary to abolish all badges and incidents of slavery. *Civil Rights Cases*, 109 U. S. 3; *Griffin v. Breckenridge*, 91 S. Ct. 1790. We consider it reasonable to conclude that the Thirteenth Amendment, as a self-executing doctrine, carries with it the same breadth of action as is given to Congress to enforce it. Therefore, either directly through the Thirteenth Amendment or by Congressional action, all badges and incidents of slavery are or could be abolished.



The invidious racial discrimination engaged in by Moose Lodge is certainly a badge and incident of slavery. Its elimination should certainly take precedence over any right of private association involved in membership in a private fraternal organization.

Moreover, the "could be" possibility through Congressional action has long been a reality as a result of the existence of 42 U. S. C. § 1981. This provision applies to private action and can be taken to forbid racial discrimination in private contracts. Since the relationship between an individual and his club is a contractual one, it should be subject to § 1981; and any racial discrimination involved in that contract should be void.

Thus, either by direct application of the Thirteenth Amendment or by Congressional action pursuant to the powers given Congress under the Commerce Clause or the Thirteenth Amendment, private racial discrimination may be reached without any consideration of state action. These possibilities support the conclusion already reached with respect to Title II of the Civil Rights Act of 1964 that Congress undoubtedly was doing no more, in excepting private clubs from the application of Title II, than making clear its policy decision that private clubs (like private homes) were not to be considered places of public accommodation.

**ARGUMENT.**

**I. Irvis Has Stated and Maintained a Case or Controversy Within the Jurisdiction of a Three-Judge Federal District Court and of This Court on Direct Appeal From the Final Decree of the District Court.**

**A. The Complaint Stated a Cause of Action Within the Jurisdiction of a Three-Judge Federal District Court.**

Following Moose Lodge's refusal to serve him because he was a Negro and because of Moose Lodge's discriminatory membership and operating policies, Irvis brought this action under 42 U. S. C. § 1983 and invoked three-judge court jurisdiction under 28 U. S. C. § 1343(3) and § 2281.

It is undisputed that Irvis was subjected to an act of discrimination by Moose Lodge solely because he was a Negro. It is equally undisputed that this act of discrimination took place in connection with Moose Lodge's use of its state-granted liquor license and because of Moose Lodge's explicit exclusionary policies with respect to non-Caucasians. Irvis has alleged, and will discuss further in this part of the brief, that the granting of the liquor license to Moose Lodge and all of the Pennsylvania scheme of alcoholic beverage control was and is accomplished pursuant to a state-wide system of statutory origin and authority, thus requiring him necessarily to allege the unconstitutionality of the statute as applied and to request the convening of a three-judge court.

The allegations of the Complaint thus presented a case in which a Negro citizen of the United States was deprived of a right (not to be denied the equal protection of the laws) secured by the Constitution. This denial was caused

by Moose Lodge and the Board acting under color of the Liquor Code of Pennsylvania through the grant (by the Board) and use (by Moose Lodge) of a liquor license in conjunction with Moose Lodge's admitted racially discriminatory policies.

Whether "under color of any statute" (42 U. S. C. § 1983) or "under color of any State law, statute" (28 U. S. C. § 1343(3)) is taken to mean something different from "state action" or the same thing as "state action," the result is the same. As Moose Lodge has pointed out in its brief (pp. 33-34), the complaint stated a case cognizable under these provisions.

The "under color" language, it has been noted by the Court, has consistently been treated as meaning the same thing as "state action." *United States v. Price*, 383 U. S. 787 at 794 (n. 7). An indication that "under color of any statute" may have a narrower meaning appears in Justice Brennan's concurring opinion in *Adickes v. S. H. Kress and Company*, 398 U. S. 144 at 209-212; but even this reading of the phrase sustains federal jurisdiction here.

Justice Brennan notes (a) that Congress may protect Fourteenth Amendment rights against interference by private persons without regard to state involvement in the private interference,<sup>6</sup> 398 U. S. 144 at 209, and (b) that a private persons acts under color of a state statute when he "in some way acts consciously pursuant to some law that gives him aid, comfort, or incentive;" 398 U. S. 144 at 212, or when "the private discriminator consciously draws from a state statute any kind of support for his discrimination." 398 U. S. 144 at 212.

Clearly, even under this "narrower" view, the act of discrimination practiced by Moose Lodge was done under

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6. *United States v. Guest*, 383 U. S. 745, which dealt with a criminal provision, 18 U. S. C. § 241, related to 42 U. S. C. § 1983.

color of the statute. Under the "state action" concept approved in *United States v. Price*, 383 U. S. 787 at 794, no other conclusion is possible. Several lower federal courts, in recent analogous situations, agree. See *Powe v. Miles*, 407 F. 2d 73 (2nd Cir. 1968), sustaining a cause of action under 42 U. S. C. § 1983 and jurisdiction under 28 U. S. C. § 1343(3) in part under "state action" principles and *Seidenberg v. McSorley's Old Ale House, Inc.*, 308 F. Supp. 1253 (S. D. N. Y. 1969) and 317 F. Supp. 593 (S. D. N. Y. 1970), similarly sustaining a cause of action and jurisdiction under these provisions in the sex discrimination context.

Passing, then, to the three-judge court request, Irvis can add little to the presentation in Moose Lodge's brief supporting the convening of the three-judge court. As pointed out there (pp. 35-37) all of the elements usually relied upon to defeat three-judge court jurisdiction are absent here, viz.:

1. Unconstitutional application of a statute to aid discrimination is properly alleged. Moose Lodge refers to this as negative discrimination; but by rephrasing the statement, it could as easily recognize the affirmative nature of the discrimination. That is, the Liquor Code requires the Board to issue and renew the license without considering Moose Lodge's racial discrimination, and Moose Lodge barred Irvis because of his race.

2. Injunctive relief is requested in conjunction with declaratory judgments.

3. Injunctive relief was granted, as required to sustain this Court's jurisdiction under 28 U. S. C. § 1253.

4. No issue of the Supremacy Clause is involved.

5. The unconstitutionality of the statute is directly put in issue by the complaint.



6. The statutory scheme involved is state-wide in effect and is administered by a Board of state officers having responsibility co-extensive with the scope of the Liquor Code.

7. The constitutional issue is not insubstantial.

Irvis agrees with Moose Lodge that the most recent decisions of this Court provide compelling support for three-judge court jurisdiction. In *Flast v. Cohen*, 392 U. S. 83, the convening of a three-judge court under the somewhat narrower scope of 28 U. S. C. § 2282 was upheld. There, complainants alleged, in part, that portions of the Elementary and Secondary Education Act of 1965, 79 Stat. 27, 20 U. S. C. §§ 241(a) et seq., §§ 21 et seq., if read as authorizing expenditures for education in religious schools, were unconstitutional. The Solicitor General argued that no three-judge court should have been convened because (1) the complainants only sought to stop operation of specific programs in New York City and (2) the complainants questioned only the administration of the Act.

The Court unanimously upheld the convening of a three-judge court. It pointed out, first, that complainants' specific focus on programs in New York [like Irvis' specific focus on the actions of the Moose Lodge] only served to clarify the issues and did not limit the impact of the constitutional challenge which could involve relief extending to any similar program.

"Therefore, even if the injunction which might issue in this case were narrower than that sought by appellants, we are satisfied that the legislative policy underlying § 2282 was served by the convening of a three-judge court, despite appellants' focus on New York City's programs." 392 U. S. 83 at 90.

Second, the Court held that the complaint against unauthorized administration of the statute did not vitiate the



effect of the contention that the Act itself was void, a contention which required determination by a three-judge court.

*Turner v. Fouche*, 396 U. S. 346, involved numerous attacks on three-judge court jurisdiction, all of which were rejected by the Court. For present purposes the important point is found in the third paragraph of footnote 10 of the Court's unanimous opinion. 396 U. S. 346 at 353. Here, the Court reaffirmed the long-sustained distinction between a request for injunctive relief on the ground of the unconstitutionality of a statute, "either on its face or as applied, which requires a three-judge court," and a similar request which only attacks the unconstitutionality of the result obtained by use of a statute not alleged to be unconstitutional, which does not require a three-judge court.

All grants of liquor licenses (including club licenses), all authority exercised by the Board, all controls placed upon alcoholic beverages in Pennsylvania flow from provisions of the Liquor Code. Thus, the Code states, § 104(c) (p. 12):

"(c) Except as otherwise expressly provided, the purpose of this act is to prohibit the manufacture of and transactions in liquor, alcohol and malt or brewed beverages which take place in this Commonwealth, except by and under the control of the board as herein and specifically provided, and every section and provision of the act shall be construed accordingly. The provisions of this act dealing with the manufacture, importation, sale and disposition of liquor, alcohol and malt or brewed beverages within the Commonwealth through the instrumentality of the board and otherwise, provide the means by which such control shall be made effective . . ."

The authority of the state to exercise such full control is unquestioned and recognized. *Goesaert v. Cleary*, 335 U. S. 464, *Tahiti Bar, Inc., Liquor License Case*, 186 Pa. Super. 214, 142 A. 2d 491, affirmed, 395 Pa. 355, 150 A. 2d 112, appeal dismissed, 361 U. S. 85.

Section 207 (pp. 14-15) of the Liquor Code states in part:

"Under this act, the board shall have the power and its duty shall be:

(b) To control the manufacture, possession, sale, consumption, importation, use, storage, transportation and delivery of liquor, alcohol and malt or brewed beverages in accordance with the provisions of this act

(d) To grant, issue, suspend and revoke all licenses and permits authorized to be issued under the act and the regulations of the board . . .

(i) From time to time, to make such regulations not inconsistent with this act as it may deem necessary for the efficient administration of the act . . ."

Under § 401 (pp. 20-21) of the Liquor Code the Board is given authority, "subject to the provisions of this act and regulations promulgated under this act," to issue licenses to hotels, restaurants and clubs. The granting of liquor licenses is properly designated a matter subject to control of the legislature. *Spankard's Liquor License Case*, 138 Pa. Super. 251, 10 A. 2d 899.

The granting of licenses is conditioned by §§ 403 and 404 (pp. 21-24) of the Liquor Code. An applicant must

submit an application containing information required by the Board, a description of the premises for which a license is required and other information regarding the premises as the Board requires. The descriptive information must show any proposed alterations or construction. A corporate applicant must be a Pennsylvania corporation or a foreign corporation authorized to transact business in Pennsylvania; and its officers, directors, stockholders and manager must be citizens of the United States. A club applicant must submit a list of the names and addresses of its members, directors, officers, agents and employees along with any other information regarding club affairs as the Board requires. No license may be issued to a club if the operation of the licensed business would not inure to the benefit of the entire membership of the club. The applicant must be a person of good repute, and the issuance of the license must not be prohibited by any of the provisions of the Liquor Code.

A license may be refused if the place to be licensed is too close to a church, hospital, charitable institution, school or public playground or if it is a place where the principal business is the sale of liquid fuels and oil. A license shall be refused if it would be detrimental to the welfare, health, peace and morals of the inhabitants of the neighborhood within a radius of 500 feet of the licensed premises. A license may be refused to a corporation if any officer or director has been convicted of a felony within the five year period preceding the date of the application.

If all of these requirements and conditions (plus a few other formal ones) are met, the Board may issue a license to a club.

Renewals of licenses are governed by §470(a) of the Liquor Code. Absent a club licensee's violation of the Liquor Code or the Board's regulations or unless the club's

premises fail to meet the requirements of the Liquor Code or the Board's regulations, this section requires renewal of the license. A licensee's racial discrimination is not a basis for refusing to renew its license.

It would seem undeniable under these circumstances that the application of a state statute—the Pennsylvania Liquor Code—is involved, that Irvis has necessarily placed its validity under the Fourteenth Amendment into question and, as Moose Lodge states in its brief (p. 38):

“ . . . The complaint stated a case that required a three-judge court; such a court was therefore properly convened (A. 9, 10); and its final judgment, which granted injunctive relief against state officers (para. 2 and 3; A. 41-42), was accordingly reviewable here by direct appeal pursuant to 28 U. S. C. § 1253 . . . ”

**B. A Substantial Case or Controversy Exists for Determination by Exercise of the Judicial Power.**

Moose Lodge, in its brief (pp. 38-44), has raised a question not raised by it in its jurisdictional statement but one which may fairly be considered as within the scope of the Court's order postponing the question of jurisdiction to the hearing on the merits. As posed by Moose Lodge (Brief, p. 2), the question is “[w]hether the present cause still involves any case or controversy . . . ” Moose Lodge concludes (Brief, p. 44), (1) that Irvis has suffered no personal injury for which he seeks redress but rather has “merely a general interest common to all members of the public” (citing *Ex Parte Levitt*, 302 U. S. 633 at 634) and (2) that Irvis' cause “involves only a ‘difference or dispute of a hypothetical or abstract character’ ” (citing *Aetna Life Ins. Co. v. Haworth*, 300 U. S. 227, 240).

Moose Lodge's argument follows a certain course:

First, it agrees (Brief, p. 41) that Irvis properly stated a cause of action in his complaint. We take this to include agreement that the declaratory and injunctive relief requested by Irvis (A. 7-9) was equally proper and responsive to the deprivation incurred by him. In any event Moose Lodge never, before or now, has stated otherwise.

Second, it correctly notes (Brief, p. 42) that Irvis did not allege a personal desire to become a member of Moose Lodge. And it further correctly points out (Brief, p. 42) that Irvis, in his answer to Moose Lodge's motion to modify the decree of the court below, disclaimed any desire to prevent the members of the Moose Lodge from associating with whomever they wished and also rejected Moose Lodge's offer to amend its by-laws to eliminate any racial restrictions on the admission of guests (see A. 43).

Finally, Moose Lodge refers (Brief, pp. 43-44) to Irvis' statement in his Motion to Affirm that the constitutional right of the members of Moose Lodge to associate freely on a racially discriminatory basis does not include a concomitant right to obtain a liquor license as exhibiting Irvis' interest in obtaining only an "abstract and essentially legislative declaration" (Brief, p. 43).

From this, Moose Lodge concludes that Irvis has sought and received no personal redress (although what Irvis has sought has not changed at any time during the course of these proceedings) and, therefore, that no case or controversy now exists.

The exact objection of Moose Lodge is not easy to discern, but essentially it appears to fall within the context of the doctrine that the Court will not render an advisory opinion. *Muskra v. United States*, 219 U. S. 346. This



follows from Moose Lodge's conclusion (Brief, p. 44) with respect to disputes of an abstract nature. And, although Moose Lodge appears to disclaim raising any issue of standing (Brief, p. 39), its conclusion (Brief, p. 44) with respect to Irvis' interest in the cause nevertheless appears to inject such an issue into its argument.

This is not a case, of course, in which Irvis asserts someone else's constitutional rights to vindicate his own position. Thus, he does not claim that the discrimination practiced here was directed at another whose cause he sought to advance. *Sullivan v. Little Hunting Park*, 396 U. S. 229.<sup>7</sup> Nor is he in the position of defending himself from paying damages on the ground that to require him to do so would in fact lend support to the discriminatory actions of others. *Barrows v. Jackson*, 346 U. S. 249. Nor does he allege an economic loss flowing directly from a statutory deprivation of the personal liberties of other individuals, *Pierce v. Society of the Sisters*, 268 U. S. 510.

Irvis is a Negro. He has been subjected to racial discrimination himself precisely and solely because he is a Negro. He need not rely, nor does he rely, on anyone else's injury as a result of Moose Lodge's actions. The constitutional deprivation suffered is his.

In addition, it is correct to note that Irvis has not brought a class or representative action in any traditional sense. That is, he has not alleged that he represents all Negroes in Pennsylvania (all of whom, obviously, would be similarly situated) and that all are deprived of their Fourteenth Amendment rights by the actions complained of. There is no need for such an assertion here. It is undeniable that all Pennsylvania Negroes are affected by Irvis' suit and benefit from it. And it is equally undeniable

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7. Such a case might have been presented in the present context had Moose Lodge sought to expel its member who brought Mr. Irvis to the premises as his guest.

that Irvis has suffered discrimination because of his race and that all other Pennsylvania Negroes would have similarly suffered.

The Court has required much less in a class action context, entertaining suit even where the complainants have suffered no actual loss and could not point to anyone else who had suffered any actual loss. *Law Students Research Council v. Wadmond*, 401 U. S. 154. And in a non-class action in 1968 it struck down a 1928 state statute which had never been enforced by the state solely on the complaint of a person who feared her violation of the statute might cause her to lose her job. *Epperson v. Arkansas*, 393 U. S. 97.

But the Court has dealt with the issue raised by Moose Lodge, and it has disposed of it in a way which sustains Irvis' position. Although *Flast v. Cohen*, 392 U. S. 83, involved a particular application of these principles to the question of whether a taxpayer had sufficient standing to maintain a suit challenging certain expenditures of federal funds, it also represents a clear statement of the case-and-controversy doctrine or, as the Court described it, the concept of "justiciability," 392 U. S. 83, at 95.

It is the purpose of the doctrine to accomplish two things. First, it purports to limit the business of federal courts to issues "presented in an adversary context and in a form historically viewed as capable of resolution through the judicial process." 392 U. S. 83 at 95. Second, it enforces the separation of powers within our government by assuring "that the federal courts will not intrude into areas committed to the other branches of government." 392 U. S. 83 at 95.

The former of these finds expression in conclusive statements<sup>8</sup> such as the court will not adjudicate a political

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8. In the interest of brevity, this summary does not repeat the case citations found in *Flast v. Cohen*, 392 U. S. 83 at 95, n. 10 through n. 13, in support of each statement.

question or it will not render an advisory opinion or it will not act when a party has no standing to maintain the action. As the Court also points out, 392 U. S. 83 at 96, the rule against rendering an advisory opinion also reinforces the separation of powers principle because it also restricts the federal courts in their scope of review over actions of the federal legislative and executive branches of government. This expression by the Court concludes succinctly:

“Consequently, the Article III prohibition against advisory opinions reflects the complementary constitutional considerations expressed by the justiciability doctrine: Federal judicial power is limited to those disputes which confine federal courts to a role consistent with a system of separated powers and which are traditionally thought to be capable of resolution through the judicial process.” 392 U. S. 83 at 97.

Turning from this question to the general problem of standing, the Court similarly set forth guideposts. The “fundamental aspect of standing is that it focuses on the party seeking to get his complaint before a federal court and not on the issues he wishes to have adjudicated,” 392 U. S. 83 at 99. The heart of the question is “whether the party seeking relief has ‘alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult questions.’ *Baker v. Carr*, 369 U. S. 186,” 392 U. S. 83 at 99. In other words, standing raises the question of whether a complainant is a proper party to seek adjudication of an issue, not whether the issue is justiciable (e.g. a party may have standing, but the issue is a non-justiciable, political one).

In *Flast v. Cohen* itself the specific question of standing was resolved in favor of the taxpayers because the Court

found they had shown "the necessary stake as taxpayers in the outcome of the litigation to satisfy Article III requirements," 392 U. S. 83 at:102.

In light of these principles, what do we find in the present case. Irvis' injury was and is unquestioned: solely because of his race he was subjected to discriminatory action by Moose Lodge. This action was required by the express provisions of the Constitution of the Moose Lodge. The Moose Lodge is the possessor and user of a Pennsylvania club liquor license without which it would suffer in membership and functioning. As a private club, Moose Lodge, like a private person, may exhibit prejudice and bigotry; but it may not call upon the state to enforce or support its discriminatory acts. Therefore, it may not continue to possess and use the state-granted and regulated liquor license unless it is willing to forego its discriminatory practices and afford Irvis and others like Irvis the free opportunity to participate in the activities and benefits accruing from such possession and use *whether or not* Irvis and others like Irvis choose to take advantage of this opportunity. If it is not, its license should be terminated; and the Board should be enjoined from issuing licenses to private clubs which so discriminate.

Clearly, the injury suffered by Irvis was not just that a private organization barred him because he was black. This, it was entitled to do. The injury was that Irvis was discriminated against by a private club which had called upon the State to support its existence and functioning and, thus, to support its discrimination.<sup>9</sup> This cannot be done, and this is why the redress sought by Irvis was aimed at the

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9. It is, in a strict sense, only incidental that the act of discrimination here occurred directly in connection with Moose Lodge's use of the liquor license since enjoyment of the license is inextricably tied to membership. It is doubtful if Moose Lodge could qualify for a license if it attempted to segregate its eating and drinking functions from its other activities.



Board primarily and at the Moose Lodge only indirectly. The specific allegations of Moose Lodge's discrimination primarily impart "specificity and focus to the issues in the lawsuit" and do not limit "the impact of the constitutional challenge made in this case." *Flast v. Cohen*, 392 U. S. 83 at 89.

Certainly, the concept of justiciability is served by this case. Irvis has been injured. He has been injured by a conjunction of actions taken by the Board and by Moose Lodge, his adversaries here. The case involves no separation of powers issue. Nor does it raise a political question or one that has become moot. The judicial process appropriately has been invoked by one who has been deprived of his constitutional rights to force a halt to further possible deprivations. Irvis' personal stake in this is not subject to question.

What does Moose Lodge say about this? It says first (Brief, pp. 42-43) the decree has given Irvis no redress for any injury suffered by him, that he has no more interest in this matter than the lawyer in *Ex Parte Levitt*, 302 U. S. 633, had in seeking Justice Black's removal from the bench—i.e. the same interest as the general public. Yet, it is Irvis himself who was discriminated against in fact. More importantly, it is Irvis himself (and all other Negro citizens of Pennsylvania) who has been and continues to be denied any opportunity to determine for himself if he wishes to seek to enjoy the benefits flowing to members of private clubs which possess and use liquor licenses. This foreclosing of any opportunity to become a member of a club which holds a license is itself sufficient injury to afford redress to Irvis. To hold otherwise would be similar to a holding that the convicted persons in the restaurant sit-in cases<sup>10</sup> could not challenge their convictions because they

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10. *Peterson v. City of Greenville*, 373 U. S. 244; *Lombard v. Louisiana*, 373 U. S. 267; *Robinson v. Florida*, 378 U. S. 153.



did not insist that they wanted to return to eat at the very restaurants at which they had been arrested or to have denied relief to the ladies who sought to remove the male-only rule at McSorley's Old Ale House<sup>11</sup> because they did not insist that they intended to appear frequently for ale.<sup>12</sup>

Second, Moose Lodge says (Brief, p. 42) Irvis has refused to go along with a modification of the decree which "would make repetition impossible." This contention is based upon Moose Lodge's motion to modify the decree (A. 42-44) and somehow to allow it to change its operations and to permit Irvis to be brought to the Moose Lodge's premises as a guest. But, as Irvis pointed out in his answer to this motion (A. 44-47) nothing at all would be changed even if this were done because the vice of racial discrimination arose from the privileges of membership, either those accruing to a person in his own enjoyment of them or those accruing to a person in his ability to bring a guest or guests to Moose Lodge. Nothing in the suggested modification would make repetition impossible because the fact that Irvis was a guest was purely happenstance. Whether he be barred because no member would invite him or because he has no opportunity to become a member, the situation remains unchanged: The discrimination is not eliminated, nor is the state's support removed.

It is an odd fact, previously unknown to Irvis and revealed in Moose Lodge's brief (p. 10), that during the pendency of this action and prior to Moose Lodge's motion

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11. *Seidenberg v. McSorley's Old Ale House*, 308 F. Supp. 1253 (S. D. N. Y. 1969), 317 F. Supp. 593 (S. D. N. Y. 1970).

12. The distinction between the right to decide for oneself and the actual use of a facility is not only an important one here; it has practical significance. In fact, the ladies have made little use of McSorley's since their legal victory. See *New York Times*, June 27, 1971, § 1, at 48, col. 1: "They were more concerned at the right to come in than actually coming in," said Daniel O'Connell Kirwan, the manager of McSorley's, the city's oldest saloon."

to modify the decree, the General Laws of the Loyal Order of Moose regarding admission of non-members were amended. Section 92.1<sup>13</sup> (appendix G to J. S., p. 72), as amended, further restricted the admission of guests to persons "who are eligible for membership in the fraternity" (Brief, p. 10, n.). This change would thus make it impossible for a member to bring Irvis as a guest to the premises of Moose Lodge and leads Irvis to wonder how the proposed modification would have accomplished even its limited goal.

Third, Moose Lodge says (Brief, pp. 42-43) the decree embodies "generalized and abstract constitutional theory." Irvis is not certain of the purpose of this objection in the context in which it appears. Nevertheless, it seems misplaced. The decree is intended specifically to redress the deprivation of rights involved here consistent with the scope of these rights. To have ordered Moose Lodge to admit Irvis to membership would have gone further than required. To have directed revocation of Moose Lodge's liquor license without offering Moose Lodge an opportunity to reacquire it on a basis consistent with constitutional requirements would have been punitive. Thus, the decree affords Irvis the requested redress for his injury without infringing on Moose Lodge's private club status.

How this careful delineation of rights and remedies has led Moose Lodge to find no adversariness in this proceeding thus remains unclear. In view of carefully explained principles set forth by this Court, Irvis is an injured party with a direct, personal stake in the judicial resolution of his complaint. His position is far different from that of just any member of the public; his cause is far from hypothetical or abstract.

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13. Prior § 92.1 is set forth on page 10 of Moose Lodge's Brief with the misprinted heading of § 91.1.

**II. Pennsylvania, in Establishing an Alcoholic Beverage Control System Under Which It Grants a Liquor License to a Racially Discriminating Private Club Whose Possession and Use of That License Are Extensively Regulated by the State and Whose Purposes, Membership and Functions Are Materially Benefited by Its Possession and Use of the License, Has Become Involved in the Racial Discrimination Practiced by the Private Club to the Degree Condemned by the Fourteenth Amendment.**

**A. The Pennsylvania Alcoholic Beverage Control System Leads to Extensive and Significant Involvement of the State in the Affairs of Moose Lodge.**

This case poses a now familiar dichotomy, state action v. no state action, with all of its attendant consequences on the decision of this Court. One writer<sup>14</sup> has characterized the "no state action" contention as the main support for the "maintenance of de facto racism" in our society and asserted the position that the guarantee of "equal protection" should mean that "members of a race are to be shielded in the most ample way from any incidence of governmental power that works their disadvantaging by virtue of their race . . ." Yet, no single such test has ever been promulgated by the Court. To the contrary, it has warned of the difficulties of doing so while simultaneously affirming the breadth of the Fourteenth Amendment's protections:

Because the virtue of the right to equal protection of the laws could lie only in the breadth of its application, its constitutional assurance was reserved in terms

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14. Black, *Forward: "State Action," Equal Protection and California's Proposition 13*, *The Supreme Court, 1966 Term*, 81 Harv. L. Rev. 69 (1967) at 70-71.

whose imprecision was necessary if the right were to be enjoyed in the variety of individual-state relationships which the Amendment was designed to embrace. For the same reason, to fashion and apply a precise formula for recognition of state responsibility under the Equal Protection Clause is an 'impossible task' which 'This Court has never attempted.' . . . Only by sifting facts and weighing circumstances can the non-obvious involvement of the State in private conduct be attributed its true significance." *Burton v. Wilmington Parking Authority*, 365 U. S. 715 at 722.

Nevertheless, the Court has not failed to lend guidance in this field. Early on, the Court held that purely private conduct, however discriminatory, was shielded from interference, that only where state action or support was present could redress be afforded, *Civil Rights Cases*, 109 U. S. 3. But, as that opinion equivocally states, the protections of the Fourteenth Amendment are aimed at "State action of every kind . . ." 109 U. S. 3 at 11. This broad conclusion has found its contemporary expression in *United States v. Guest*, 383 U. S. 745 at 755-56:

"This is not to say, however, that the involvement of the State need be either exclusive or direct. In a variety of situations the Court has found state action of a nature sufficient to create rights under the Equal Protection Clause even though the participation of the State was peripheral, or its action was only one of several co-operative forces leading to the constitutional violation."

The Court has described the problem as posing "polar opposites, each of which is easily identified and resolved. On the one hand, the Fourteenth Amendment plainly prohibits a State itself from discriminating because of race.

On the other hand, § 1 of the Fourteenth Amendment does not forbid a private party, not acting against a backdrop of state compulsion or involvement, to discriminate on the basis of race in his personal affairs as an expression of his own personal predilections." *Adickes vs. S. H. Kress and Company*, 398 U. S. 144 at 161.

What, then, is present in the context of liquor licenses, private clubs and discrimination? Is it purely private conduct when a private club licensee discriminates, or is it action permeated with state support and involvement? The Alcoholic Beverage Control Commission of the Commonwealth of Massachusetts, in its recent (April 7, 1971) decision in proceedings involving the renewal and revocation of private club licenses in that Commonwealth, noted that discriminatory practices by fraternal organization licensees were found to "breed mistrust in government because of the belief that government condones and supports the open and notorious practice of discrimination by granting to these clubs a privilege in the form of a liquor license." In this light let us turn to the Pennsylvania alcoholic beverage control system and examine its nature and impact on its licensees.

1. *The extent of the involvement and regulation is unique and far-reaching.*

Pennsylvania is a "monopoly" state. That is, pursuant to its powers under the Twenty-first Amendment it has gathered unto itself the full measure of authority allowable in constructing a system of control over the manufacture, sale, use, transportation and disposition of alcoholic beverages, including the actual sale of liquor.<sup>15</sup> It does this

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15. As expected, there are exceptions. Pennsylvania does not manufacture alcoholic beverages and it does permit distribution of malt and brewed beverage by licensed, private distributors.



through the mechanisms of several state statutes, primarily the "Liquor Code," which are printed as part of Appendix F to Moose Lodge's Jurisdictional Statement, the Board created by the Liquor Code and the Board's Regulations, also printed as part of Appendix F to the Jurisdictional Statement. Examination of each of these confirms the correctness of the characterization of the system as "pervasive" by the court below and the importance of this determination to its decision.

(a) *The Liquor Code and private clubs.*

Private clubs are simply one of three defined types of eligible applicants for what the Liquor Code terms a "retail liquor license" (Code, § 401, p. 20<sup>16</sup>). A license issued to a club is referred to as a "club liquor license" (Code, § 401, p. 20). Any licensee is entitled to purchase liquor from a Pennsylvania Liquor Store, to keep such liquor on its premises and to sell the liquor (and beer and ale purchased by it) to its guests, patrons and, in the case of clubs, members for consumption on the premises (Code, § 401, p. 20).

Licenses are renewed annually, and the Board divides the State into districts for the purpose of staggering the expiration dates (Code, § 402, p. 21, § 434(a); p. 41).

Every applicant for a license must apply in writing to the Board, pay an application fee and post a bond (Code, § 403(a), p. 21). Every application must describe the part of the premises (including the club's premises) for which the license is desired and any other information regarding the premises as the Board, by regulation, requires (Code, § 403(a), p. 21). This information must include any proposed alterations to the premises or any new construction contemplated (Code, § 403(a), p. 21). No business may be

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16. We adhere to the system of referring to the pages of Appendix F to the Jurisdictional Statement.

transacted by a licensee until the Board has approved the actual alterations or construction as being in conformity with the application and has been satisfied that the establishment meets the definition of the licensee's status as defined by the Liquor Code—e.g. "club" (A. 15) (Code, § 403(a), pp. 21-22).

Applicants are either individuals, corporations or associations (Code, § 403(b); (c), (d) and (e), p. 22). No license may be issued to a club (unlike other applicants) if the operation of the business would not inure to the benefit of the entire membership of the club (Code, § 403(f), p. 22). Every club applicant (unlike other applicants) must file with its application a list of the names and addresses of all its members, directors, officers, agents and employees, together with their dates of admission, election or employment and any other information regarding club affairs as the Board requires (Code, § 403(e), p. 22).

If the Board receives the proper application, fees and bond, if the Board is satisfied the applicant is a person of good repute and that the premises are satisfactory and that the license is not prohibited otherwise by any provisions of the Liquor Code the Board may issue a club license (Code, § 404, p. 23). The Board has limited discretion to refuse any license application if the welfare, health, peace and morals of the inhabitants of the neighborhood would be affected (Code, § 404, p. 23); and it may refuse a license if the applicant or any officer, director or partner has been convicted of a felony within five years immediately preceding the date of the application (Code, § 404, p. 24). Whatever discretion the Board has in the case of club applicants must be exercised reasonably and within limits of the Liquor Code. *Appeal of Log Cabin Rod and Gun Club*, 66 Pa. D. & C. 188; *William E. Burrell, I. B. P. O. E. of W.* 737 v. *Pennsylvania Liquor Control Board*, 172 Pa. Super. 346, 94

A. 2d 110. Nothing in these limits allows the Board to consider any racial discrimination practiced by the applicant (A. 6, 25).

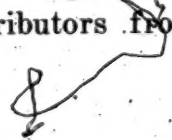
A club applicant pays an annual license fee of fifty dollars (\$50.00) or the much higher fee of hotel and restaurant applicants if it has a catering license (Code, § 405(b), p. 25).

Every licensee including a club licensee may buy liquor at wholesale (Code, § 305(b), p. 18), and may sell alcoholic beverages by the glass, open bottle or other container and mixed for consumption only on the licensed premises and, in the case of clubs, only to members in the club (Code, § 406(a), p. 25). No club (unless it holds a catering license) may sell to anyone except a member (Code, § 406(a), p. 25). However, members of another club (e.g. a Moose Lodge in another state) chartered by the same state or national organization as the licensee are considered members of the licensee (Code, § 406(a), p. 25).

Hours of service of alcoholic beverages are restricted, much less so in the case of clubs, however. Hotel and restaurant licensees may sell (on any day except Sunday) from 7:00 A. M. until 2:00 A. M. of the following day and (on Sunday) from 12:00 midnight until 2:00 A. M. and from 1:00 P. M. until 10:00 P. M. (Code, § 406(a), p. 26, and as amended by Act No. 27 of the 1971 Session of the General Assembly, effective September 7, 1971). No hotel or restaurant licensee may sell on any election day from 2:00 A. M. until one hour after the polls close (Code, § 406(a), p. 26).

On the other hand, clubs may sell on any day, *including Sunday and election day*, except between the hours of 3:00 A. M. and 7:00 A. M. (Code, § 406(a), p. 26).

Various interlocking businesses are prohibited. Essentially, these prohibitions are designed to prevent manufacturers, importers and distributors from having any



financial interest in a retail licensee, holding a retail license, owning property used by a licensee or lending money to a licensee and to prevent licensees from owning property or lending money to a manufacturer, importer or distributor (Code, § 411, pp. 33-34).

The Liquor Code contains separate provisions regarding the application for and issuance of licenses to sell only malt and brewed beverages (e.g. beer and ale). The licenses are called retail dispenser's licenses (Code, § 432, p. 38). Thus, an applicant, including a club, may apply for a license which does not permit the sale by it of liquor.

Provisions affecting a retail dispenser's license are similar to those affecting a liquor license. An application is required (Code, § 432(a), p. 38). The Board must adhere to statutory limitations before issuing a license (Code, § 432(d), pp. 38-39; § 437, pp. 43-44). Licenses are issued for one year (Code, § 434(b), p. 41). The club retail dispenser's license fee is considerably lower than other retail dispenser's license fees (Code, § 439(d) and (e), p. 45). Clubs may sell only for consumption on the premises and only to members (Code, § 442(a), p. 46). Members of other lodges of the same state or national club have member privileges (Code, § 442(c), p. 47). Interlocking businesses are prohibited (Code, § 443, pp. 47-48).

The total number of licenses is limited. The maximum number of retail licenses which may be issued in any municipality is one for each 1,500 inhabitants (Code, § 461, p. 50). However, certain types of licenses are not counted in determining if the quota is filled. These include licenses granted to airport restaurants, municipal golf courses, hotels and clubs (Code, § 461, p. 50). If, on the other hand, the quota is filled, no new licenses except for hotels, municipal golf courses and airport restaurants may be granted (Code, § 461, pp. 50-51).

Thus, in a municipality of 30,000 inhabitants, 20 retail licenses is the maximum number which may be issued except to hotels, municipal golf courses and airport restaurants. If 20 licenses have been issued (not counting those issued to clubs), no new license may be issued, even to a club. If 20 have not been issued, new club licenses may be issued freely. This partial monopoly situation regarding club licenses effectively restricts the issuance of new licenses to clubs in urban areas since quotas have long been filled.

Licenses are not assignable (Code, § 468(a), p. 56); but the Board may permit transfers of licenses within the same municipality or, under limited circumstances, of a club or restaurant license to another municipality in the same county (Code, § 468(a), p. 56). No license may be transferred (or issued) for any premises where the sale of liquid fuels and oil is carried on as a business (Code, § 468(a), p. 57; § 404, p. 23).

Licenses are subject to renewal (Code, § 470(a), pp. 53-53.1). Unless the licensee has violated any of the liquor laws of Pennsylvania or the regulations of the Board or unless the licensee has become a person of "ill repute" or the premises fail to meet the requirements of the Liquor Code or of the Board's regulations, "the license of a licensee shall be renewed" (Code, § 470(a), p. 53.1).

Provision is made for fines and revocation or suspension of licenses if a licensee violates any of the laws pertaining to alcoholic beverages or taxes thereon (Code, § 471, pp. 59-60).

Despite all other provisions of the Liquor Code, no licenses may be issued in any municipality unless the electors therein approve the granting of licenses, including club licenses, generally (Code, § 472, pp. 61-62). The issue is determined by referendum pursuant to the election laws;



and if the vote is negative, the Board may not issue licenses in that municipality (Code, § 472, p. 62).

A very special provision exists regarding the issuance of club licenses where the club owns contiguous land in more than two municipalities, in at least one of which no licenses are allowed, and where at least one acre of the land is situated in each municipality where licenses are allowed. The Board may issue a license to the club under these circumstances (Code, § 472.1, pp. 62-63). No other type of licensee is affected.

All persons pecuniarily interested in any licensed business must file his name and address with the Board. This information is a public record (Code, § 473, p. 63).

A club licensee, unlike other licensees, may surrender its license to the Board if it has not been operating its premises; and the Board may hold this license for the club for up to two years without revocation (Code, § 474, p. 64).

The Code contains a veritable battery of prohibitions applicable to licensees; and, contrary to Moose Lodge's contention (Brief, p. 67), most of these mentioned by the court below apply to clubs as well as to other licensees.

Generally, the Liquor Code makes it unlawful for any person to sell liquor except in accordance with the statute or the Board's regulations (Code, § 491(1), p. 64) or to purchase, possess or transport liquor not acquired from a State Liquor Store (Code, § 491(2) and (3), pp. 64-65) and for any licensee to fail to break any empty liquor containers (Code, § 491(5), p. 65), to adulterate any liquor or refill any container (Code, § 491(10), p. 66) or to violate any regulations of the Board regarding sale of liquor (Code, § 491(13), p. 66). Similar restrictions apply to malt and brewed beverages and retail dispenser licensees (Code, § 492, pp. 66-69).

Certain unlawful acts apply to all licensees with specific exceptions. No licensee may serve an alcoholic beverage to a person who is intoxicated, insane, a minor or an habitual drunkard (Code, § 493(1), pp. 69-70). No licensee may extend credit to a purchaser except hotels to guests, clubs to members or, under limited circumstances, to holders of credit cards (Code, § 493(2), p. 70). Licensees may not peddle any alcoholic beverage (Code, § 493(4), p. 71); fail to have available any branded merchandise advertised as available by it (Code, § 493(5), p. 71) or give away any lunch to a customer (Code, § 493(9), p. 72).

Club licensees may have entertainment on the premises without a special permit from the Board, but other licensees may not do so without paying for and acquiring an amusement permit (Code, § 493(10), p. 71). However, no licensee, including a club licensee, may permit any "lewd, immoral or improper entertainment" in any licensed premises (Code, § 493(10), p. 72).

No servant, agent or employee, with limited exceptions, of a licensee may be employed elsewhere in the alcoholic beverage business (Code, § 493(11), p. 72).

All records regarding operation of the business must be kept on the premises for at least two years, and any agent of the Board must be given access thereto (Code, § 493(12), pp. 72-73).

No licensee may employ any minor (Code, § 493(13), p. 73) or allow any undesirable person or minor to frequent the premises (Code, § 493(14), p. 73).

No licensee may cash payroll, unemployment compensation or public assistance checks (Code, § 493(15), p. 73).

No licensee may display for passers-by any price at which it will sell any alcoholic beverage (Code, § 493(18), p. 73) or advertise on the outside of its premises any brand of alcoholic beverage (Code, § 493(19), p. 74) or advertise

inside his premises any brand of alcoholic beverage except in a way limited as to cost (Code, § 493(20), p. 74).

Nothing valuable may be given to any person by a licensee to induce purchases of alcoholic beverages from the donor by the employer or principal of the donee (Code, § 493(23), pp. 74-75). Nor may any licensee give or receive anything of value in connection with the purchase or sale of alcoholic beverages (Code, § 493(24), p. 75).

Restrictions are placed upon the employment of females (Code, § 493(25), p. 75). However, these restrictions do not appear to apply to clubs.

*(b) The Pennsylvania Liquor Control Board.*

The agency through which the Commonwealth of Pennsylvania conducts this state-operated, supported and regulated enterprise is the Board. There are three members who serve as officers and agents of the Commonwealth (Code, §§ 201 and 206, pp. 12 and 14).

As would be expected, the Board is given broad powers to act and to regulate. It has general power to control all aspects of the alcoholic beverage business (Code, § 207(b), p. 14), to deal with licenses and impose fines on licensees (Code, § 207(d), p. 14) and to make such regulations as it deems necessary for the administration of the Liquor Code (Code, § 207(i), p. 15). Such regulations are to have the force of law (Code, § 207(i), p. 15).

Specific regulatory authority is given to the Board to do various things, among which is to make regulations regarding "The issuance of licenses and permits and the conduct, management, sanitation and equipment of places licensed or included in permits." (Code, § 208(h), p. 16).

*(c) The Board's regulations and private clubs.*

Turning to the Regulations of the Pennsylvania Liquor Control Board (Appendix F to Jurisdictional Statement,

pp. 105-244.14), we find such a volume of material that it would be foolish to repeat it all here. However, certain regulatory provisions, some applicable only to clubs and some applicable both to clubs and other licensees, are worth special mention.

Regulation 105 (pp. 117-119) deals with wholesale liquor purchase permit cards and implements the privilege given to licensees under § 305 of the Liquor Code to purchase liquor at wholesale prices.

Regulations 106 and 107 (pp. 121-131) deal with restrictions placed upon the transportation of alcoholic beverages and the importation and distribution of malt or brewed beverages. Extensive record-keeping and reporting are required.

Regulation 109 (pp. 135-137) deals with the restrictions on employment of minors and criminals and outside employment of licensees. These restrictions far exceed those found in normal business situations.

Regulation 111 (pp. 143-144) contains detailed requirements regarding rest rooms in licensed premises, sanitation and lighting of licensed premises and equipment used in serving malt and brewed beverages.

Pursuant to the Liquor Code's restrictions on the unauthorized giving away of food, Regulation 112 (p. 145) allows the furnishing free only of peanuts, pretzels, popcorn and potato chips.

Regulation 113 (pp. 147-149) deals exclusively with clubs. It prescribes rules regarding the maintenance of detailed membership records, income and expenditure accounts, a bank account, a minute book and the keeping of the club charter, constitution, by-laws, invoices and other records. And, obviously reflecting the days of the speak-easy, no club may maintain any barricaded doors.

Regulation 114 (p. 151) requires every corporate licensee and all clubs to report all changes in officers and directors.

Regulation 116 (pp. 159-150) limits the sale of liquor held following the death or bankruptcy of a licensee or held otherwise by the law to the Board itself.

All licensee advertising efforts of any kind are subject to Regulation 122 (pp. 177-179). Board approval is required in most cases. Further detailed requirements regarding published advertising are contained in Regulation 149 (pp. 244.3-244.8) and Regulation 150 (pp. 244.9-244.14).

Under Regulation 127 (p. 189) all licensees, except club licensees, must furnish photographs of principal officers; and all licensees, including club licensees, must furnish photographs of managers and of the licensed premises.

Regulation 129 (pp. 193-202) prohibits "missionary" work among licensees by a vendor of liquor to the Board unless the vendor has registered with the Board.

The public posting of an application for a retail license, which clubs and other applicants must do, is governed by Regulation 136 (pp. 217-218).

Pursuant to Regulation 145 (p. 237) all applicants for a license (and all officers or directors or managers of corporate applicants) must furnish their fingerprints to the Board.

This lengthy recital of the statutory, administrative and regulatory system established and conducted by Pennsylvania has only one purpose. It amply illustrates the extent to which the State has exercised its powers of control over the alcoholic beverage business and has regulated the conduct and affairs of its licensees. This extensive licensing and regulatory authority is one reason which truly makes the system a unique one, unlike other instances of licensing frequently called upon to question the presence of state action. In Pennsylvania's alcoholic beverage control system every licensee has a "partner," the State, which participates daily in its affairs.



Compare this situation with the issuance of an automobile driver's license or a building permit. True it is that an applicant for a driver's license must meet and adhere to certain standards of driving in order to protect the public at large. And it is equally true that an applicant for a building permit must comply with certain structural and safety requirements required for the public safety. But the extent of the regulation in each case nowhere approaches the quantum of control and involvement that is present in Pennsylvania's alcoholic beverage control system; and in each case, unlike the purpose of the latter system, the regulation is imposed solely for protection of the public, not as well for the benefit of the licensee.

*2. The nature of the involvement and regulation supports and benefits the private club licensee and the State.*

Having discussed the extensive nature of the involvement and regulation by Pennsylvania of its licensees, we turn to what might be called the qualitative factors which enter into the relationship. These exhibit a number of unusual features.

Initially, we might recall that we confront an area of activity which stands alone in its implications for state control. The Twenty-first Amendment itself relegates to the states a broader measure of control over intoxicating liquors than over any other article of commerce. And it is generally accepted and recognized that the granting of a license to sell alcoholic beverages is a limited privilege *in fact* and may be terminated by the State—i.e. there is no constitutional right to engage in the business of selling alcoholic beverages. *In re Tahiti Bar, Inc.*, 395 Pa. 355, 150 A. 2d 112, appeal dismissed, 361 U. S. 85. It is the State which may decide the extent and manner in which the sale of intoxicating liquors may be conducted. *Cavanaugh v. Gelder*, 364 Pa. 361, 72 A. 2d 85, cert. denied, 340 U. S. 822.

Pennsylvania, therefore, has created its system. What does it mean to Moose Lodge?

(a) *Licenses are not freely available.*

We have referred already to two features of the Pennsylvania system which place limits on the availability of licenses and on the ease with which the public may obtain alcoholic beverages. One limitation arises from the local option provisions contained in § 472 of the Liquor Code (Appendix F, pp. 61-62): These provisions eliminate any possibility of a license being granted to any applicant for use at premises located in a Pennsylvania municipality which has not, by referendum, approved the granting of liquor licenses for the sale of liquor in the municipality.

A "municipality" is defined in the Liquor Code (§ 102, p. 10) as "any city, borough, incorporated town or township of this Commonwealth." Reference to Title 53 (Municipal Corporations) of the Pennsylvania Statutes Annotated will reveal that this enumeration covers all units of municipal government that exist in Pennsylvania. Consequently, the effect of § 472 of the Liquor Code is to create a state-wide local option scheme of partial prohibition. No one is precluded from purchasing liquor and consuming it in his home; but his access to "over-the-counter" sales in clubs, restaurants and hotels is limited. Thus, those private clubs which hold licenses in municipalities where approval has been given for the granting of licenses are advantaged not only by having a license but by having one which is not available elsewhere.

The second limitation arises from the application of the quota provisions of § 461 of the Liquor Code (p. 50). We already (pp. 49-50 above) have explained the unusual effect of the language of this section which serves to eliminate club licenses from the count but to include them in the prohibition against granting additional licenses once the quota

is filled. The effect on the value and importance of holding a club license, however, is the same: once a municipality's quota is filled, no new license may be issued to a club.

The meaning of this restriction on the number of available licenses is clear. It makes possession of a license by a private club more valuable than it would be were licenses freely available; and to the extent that the available licenses have been issued to racially discriminating private clubs such as Moose Lodge, it reduces the possibility that private club licenses will be available for nondiscriminating private clubs.<sup>17</sup> There is, therefore, a certain monopoly aspect to Pennsylvania's system of issuing liquor licenses; and the possession and use of such a license becomes accordingly more important and valuable.

(b) *Licensees purchase liquor at wholesale.*

The unlicensed individual who wishes to partake of alcoholic beverages in his home does so by purchasing liquor by the bottle. In Pennsylvania he can make this purchase only at a state-owned and operated Liquor Store. Liquor (and wine) is sold there at fixed prices reflecting the cost at which the Board purchases these items from its suppliers

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17. The importance of this factor cannot be ignored. In a feature story on private fraternal clubs appearing in The New York Times on November 16, 1970, p. 1, col. 8, the writer noted: "Being a member of the Elks or other fraternal organizations has long been considered a must by politicians in many areas, but there have been times in recent years when their refusal to admit blacks has been a sensitive issue for members who were candidates. And the Elks have shown no enthusiasm for changing their restrictions. Last summer at their convention in San Francisco, they voted overwhelmingly for the second time against a proposal that the racial bar be dropped." Earlier in the article the writer, in noting the growth in the membership roles of fraternal organizations, stated total membership in the Elks to be 1,508,050, in the Moose to be 1,137,948 and in the Eagles to be about 850,000. A news report in The New York Times of August 4, 1969, p. 17, col. 1, indicated that the Fraternal Order of Eagles had voted to keep their restrictive clause against non-white persons.

plus the markup which the Board fixes pursuant to its powers under § 207(b) of the Liquor Code (p. 14) plus the tax imposed by the Act of June 9, 1936, Pamphlet Laws 13, 47 Pa. Stat. Ann. §§ 794 to 796 plus the Pennsylvania Sales Tax imposed pursuant to §§ 201 and 2(j) of the Act of March 6, 1956, Pamphlet Laws 1228; as reenacted and amended prior to March 4, 1971, 72 Pa. Stat. Ann. §§ 3403-201 and 3404-2(j) and the Act of March 4, 1971, Act No. 2 of the 1971 Session of the General Assembly, §§ 202 and 201(k) (10), from March 4, 1971 and thereafter.

The licensee, club included, is in a different position. Pursuant to § 305(b) of the Liquor Code (p. 18) every Pennsylvania Liquor Store is to sell liquor "at wholesale" to licensees; and under this authority the Board has issued its Regulation 104 (pp. 117-119) to implement this right of a licensee to acquire liquor at wholesale prices. Therefore, the racially discriminating private club, like other licensees but not like unlicensed purchasers, may buy liquor at reduced prices and reap the benefit in additional income accruing to it from its subsequent sales.

(c) *Moose Lodge sells alcoholic beverages to its members.*

The unlicensed individual who purchases an alcoholic beverage (liquor or wine from a State Liquor Store, malt or brewed beverages from a distributor) does so usually for his own consumption or that of his friends; but in no event is he permitted to sell what he has purchased without violating §§ 491(1) and 492(2) and (3) (pp. 64, 66 and 67) of the Liquor Code.

This is in direct contrast to the position of a licensee. Under § 401 of the Liquor Code (p. 20) the authority given to a licensee is to sell liquor and malt and brewed beverages. In the case of a club licensee the authority given is to sell to members.

The club, therefore, is not just a convenient conduit for the purchase and consumption of alcoholic beverages by its members. It is engaged in an income-producing activity through its sales of these beverages to its members.

(d) *In its sales activity Moose Lodge is less restricted than other licensees.*

In addition to the advantages already mentioned, Moose Lodge (and other private clubs) enjoys an advantage not given even to other licensees. Section 406(a) of the Liquor Code (p. 26) generally restricts hours of sale in two ways. First, it limits sales by non-club licensees on weekdays to the hours between 7:00 A. M. and 2:00 A. M. of the following day and on Sundays to the hours between 12:00 midnight and 2:00 A. M. and 1:00 P. M. and 10:00 P. M. In addition, prior to September 7, 1971, Sunday sales outside of Philadelphia and Pittsburgh (Pennsylvania's only first class city and second class city respectively, see § 1 of the Act of June 25, 1895, Pamphlet Laws 275, as amended, 53 Pa. Stat. Ann. § 101) were totally outlawed. Second, the Sunday sales authority given to non-club licensees is restricted to those who do a substantial part of their business in food sales (§ 406(f)<sup>18</sup> of the Liquor Code, p. 28, and Regulation 141.01 and 141.02, p. 229).

The only hours restriction placed on club licensees is that they may not sell between the hours of 3:00 A. M. and 7:00 A. M. (Liquor Code, § 406(a), p. 26). Thus, a club may sell liquor and malt and brewed beverages seven days a week, twenty hours a day. The second restriction regarding food sales does not apply to a club at all. Thus, a club need not be concerned with making substantial sales of food before it can sell alcoholic beverages to its members. It can

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18. Act No. 27 of the 1971 Session of the Pennsylvania General Assembly moved the food requirement into subsection (a) of § 406 and places the percentage at forty percent.



carry on its income-producing sales with considerably more freedom and benefit than can other licensees.

- (e) *To Moose Lodge the possession and use of a liquor license is of financial value and significantly contributes to its continued existence and operation.*

We already have seen that a private club which possesses and uses a liquor license in Pennsylvania holds something which (i) is not available everywhere, (ii) is not freely available even where permitted, (iii) permits it to purchase liquor at a wholesale price, (iv) permits it to realize income from the sale of alcoholic beverages during hours when no one else is allowed to sell them and without restriction as to accompanying food sales.

What this means to Moose Lodge is not difficult to determine. It is demonstrated in several ways in the record in this case.

First, it is demonstrated in Moose Lodge's admission (A. 25) to the averment in paragraph 4 of the Complaint (A. 4) that "The receipt and ownership of such a [liquor] license is a valuable privilege granted to a club by the Commonwealth of Pennsylvania through Defendant Board." Despite Moose Lodge's effort (Brief, p. 25) to avoid the implications of this admission and to characterize it as a "relationship" which is a "matter of law rather than of fact," it is clear that the averment and the admission do not seek to establish any legal relationship at all. Rather, their clear purpose is to indicate as a matter of fact that what the Board has granted Moose Lodge is valuable and is a benefit not freely available to all.

Second, confirming this fact, Moose Lodge itself made two averments in its answer which Irvis has admitted are true (A. 19, 20, 25). The first of these states that if Moose Lodge were denied its right to obtain a liquor license, "it would be greatly impeded in that it would sustain a loss of

membership and its capability of carrying on its benevolent purposes would be seriously impaired." The second, in a similar vein, states that if Moose Lodge were denied a liquor license or the right to obtain one, it "would be greatly impeded in that it would sustain a great loss in membership and its capability of contributing to the purposes of the Supreme Lodge would be seriously impaired."

Irvs takes these statements at face value. Fairly read, they indicate that because of its possession and use of a liquor license Moose Lodge is able to attract and keep its membership and to provide support for its stated fraternal and charitable purposes. Without a liquor license it would lose both members and money. Members would be lost because their interest in Moose Lodge would wane without the availability of alcoholic beverages. Money would be lost because the decrease in membership would cause a loss in dues and a loss in receipts from the sale of alcoholic beverages. In short, the liquor license has become an organizational and financial mainstay to Moose Lodge.

An important aspect of this situation is that these benefits flow directly from the possession and use of the license, not from activities of Moose Lodge carried on independently of this possession and use and to which the license is only an incidental contributor. This significant fact distinguishes this license from the vehicle operator's license of a traveling salesman or the building permit issued to a business enterprise. In these latter cases the license itself confers no direct financial or other support for the possessor and user. Support there flows only from the independent efforts of the possessor. A liquor license is truly unique in this respect.

(f) *A direct financial return flows to the State treasury.*

In this discussion we have not emphasized the other side of the picture, that which reveals the mutuality of the

benefits conferred. While the analogy to the biological state of symbiosis invoked in Irvis' Motion to Affirm (p. 5) may be overly picturesque, it nevertheless aptly portrays the relationship between State and licensee. The advantages to Moose Lodge we have seen: The advantage to the State is obvious for through the purchase of liquor from the State a licensee contributes both profit and tax<sup>19</sup> to the State Treasury. No breakdown of the amounts contributed by clubs or other licensees is available, but among the papers in the record here and certified to the Court by Moose Lodge is a comparative operating statement of the Board (Request for Certification of Record, Item 10, No. 3, Exhibit "A") from 1933-34 through 1968-69. The figures are impressive.

During that 36 year period the Board realized a total of \$7,841,718,290.46 in sales receipts and taxes. It turned over to the Commonwealth's general fund \$2,143,222,838.08 in profit and taxes. For the 1968-69 year alone the Board took in \$423,594,088.29 in sales receipts and taxes and contributed \$134,911,137.59 to the general revenues of the State. By any standard these are significant amounts and amply illustrate the importance of Pennsylvania's system of control to the welfare of the State.

All of these factors converge toward one conclusion: Pennsylvania's system of licensing and regulation under the Liquor Code and related statutes goes far beyond any routine form of licensing. In the field of alcoholic beverage control the system produces major and indispensable support for a club licensee's financial and organizational stability and reciprocal financial benefits to the State.

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19. We do not dwell upon the financial return from license fees paid to the Board since these are returned to the various municipalities in Pennsylvania where the paying licensees are located (Liquor Code, § 801, p. 97). However, these, too, constitute a contribution to government and should be mentioned.

**B. Pennsylvania's Involvement Is So Significant That Moose Lodge's Racial Discrimination Constitutes State Action in Violation of the Fourteenth Amendment.**

We have seen, thus far, that Pennsylvania's alcoholic beverage control system is, as the court below characterized it, pervasive in the scope and extent of its regulation of licensees. We also have seen that the system is one which confers substantial benefits on Moose Lodge and the State.

These factors make the system unique in the general field of licensing and set it apart from the other types of licenses mentioned by Moose Lodge in its Brief (p. 64). Licenses whose general purposes are to assure adherence to defined standards of health and/or safety, licenses whose general purposes are to assist in the maintenance of a system of public information and record and licenses whose general purposes are to provide evidence of business or professional qualifications all stand on a different footing from the liquor license in both of these characteristics and cannot be equated with it for purposes of determining the presence or absence of state action.

The issue is further complicated by the labeling process. "Licensing," as we have just noted, involves a great variety of situations, all quite different in effect and purpose and in the relationship created between the licensing state and the so-called licensee. Therefore, attempts to reach conclusions by forcing all "licensing" into a single mold usually point to the easily determined case (e.g. automobile driver's license, elevator inspection certificates, marriage license) and fail to recognize the differences presented by the liquor license.

How useless this generalized labeling process can become is further seen if the various attributes and indicia of Pennsylvania's liquor license, previously described, are

recalled. In the context of a business activity which private parties cannot enter as a matter of right, *Crowley v. Christensen*, 137 U. S. 86, and of the economic benefits which flow to the recipient of the license, to say no more of the extensive regulatory process, this so-called "license" really bears little resemblance to "licenses" in the generalized sense just mentioned. It is more like a franchise to do business and to reap the rewards therefrom, subject to State control. Thus, the liquor license deserves to be and should be considered in light of its own intrinsic attributes if a meaningful decision is to be reached in this case.

It is Irvis' belief that this approach is what the Court has suggested when, in *Burton v. Wilmington Parking Authority*, 365 U. S. 715, it said (at 722) "... to fashion and apply a precise formula for recognition of state responsibility under the Equal Protection Clause is an 'impossible task' which 'This Court has never attempted.' . . . Only by sifting facts and weighing circumstances can the non-obvious involvement of the State in private conduct be attributed its true significance." and when, in *Reitman v. Mulkey*, 387 U. S. 369 at 378, it repeated those words.

It also is Irvis' belief that the only truly relevant inquiry is the one which focuses on what the State has done or is being asked to do, not on how or when or where the act of discrimination occurs. That is, the racial discrimination practiced by Moose Lodge is tinged with state action because of the involvement or support or encouragement or command of the State, not because the act does or does not occur in a public setting, as Moose Lodge argues (Brief, pp. 60-62).

To support this position, we turn to the cases. No single case is exactly like this one, and few are like each other. But all are relevant to the inquiry posed and all provide insight into the problem.



1. *The presence of state action is revealed by the extent and nature of what the State has done.*

Although they arose in a context totally unlike the present one, the triumvirate of sit-in cases of 1963 and 1964 present a good starting point. *Peterson v. City of Greenville*, 373 U. S. 244, *Lombard v. Louisiana*, 375 U. S. 267, and *Robinson v. Florida*, 378 U. S. 153, all involved convictions for trespass after petitioners had refused to leave segregated eating facilities; and in all the discrimination occurred when petitioners were denied service (not when the States' judicial authorities were exerted to enforce their respective trespass laws). The point of variation in each was the nature of the State's involvement, and it was on this factor that the opinions dwelt.

In *Peterson* the State's involvement took the form of a local ordinance requiring proprietors of restaurants to segregate the races. The simple existence of the ordinance with its attendant official command of racial discrimination, apart from any showing that the discriminating party was motivated by the command, was sufficient to make the private discrimination state action.

In *Lombard* the State's involvement took the form of public statements by local officials condemning sit-ins and promising enforcement of the trespass laws. Nothing in the statements themselves was discriminatory. Nor did they command that discrimination be practiced although racial segregation was the rule in the local restaurants. The statements themselves, in the context of the private discrimination, were sufficient to invest the latter with state action.

In *Robinson* no State command or policy of restaurant segregation was present. The only State involvement was a State regulation requiring separate toilet facilities for the races. This alone was held to be sufficient State involvement to make the private discrimination state action. Fairly

stated, *Robinson* stands for the view that State discouragement of private integration lends the requisite state action to the discriminatory act.

All three of these cases, removed as they may be from the factual context of Moose Lodge's discrimination and Pennsylvania's grant of a liquor license, illustrate, first, that the element of private discrimination in these cases is a fixed factor, second, that the involvement of the State need not be the motivation behind the private discrimination and, in fact, may be unrelated to the specific act of discrimination itself and, third, that the variable in each case—what the State has done—is the proper subject of inquiry. If the State has commanded the private discrimination, state action is present. If the State has evidenced support for private discrimination against a backdrop of private discrimination, state action is present. If the State encourages private discrimination or discourages integration, state action is present.

We take these illustrations to mean that neither the reason for the discrimination nor the indirect nature of the State's involvement is a critical factor. If the State has done something (or has refrained from doing something) which supports or encourages the private party in its discriminatory actions, the private discrimination becomes state action.

If we examine other cases, more like the present one in their factual contents, we come to the same conclusions.

In *Burton v. Wilmington Parking Authority*, 365 U. S. 715, the Court was faced with a private restaurateur's refusal to serve a Negro customer. The restaurant was located in a parking building owned and operated by the Wilmington Parking Authority, a state agency, which had leased part of the building to the owner of the restaurant. The lease was unexceptional in its provisions; but, as the

Court noted, it "contains no requirement that [the] restaurant services be made available to the general public on a nondiscriminatory basis . . . ." 365 U. S. 715 at 720.

The Court found state action in the private act of discrimination. It did so because it found present a lease of public property to a private person for private business use, because the relationship between lessor (Parking Authority) and lessee (restaurant owner) "confers on each an incidental variety of mutual benefits," 365 U. S. 715 at 724, and because the Parking Authority carried on a number of activities with respect to the building. The Court noted, as well, that it could not ignore "especially in view of Eagle's [the restaurant's] affirmative allegation that for it to serve Negroes would injure its business; that profits earned by discrimination not only contribute to, but also are indispensable elements in, the financial success of a governmental agency." 365 U. S. 715 at 724.

By adding all of these factors, the Court found "that degree of state participation and involvement in discriminatory action which it was the design of the Fourteenth Amendment to condemn." 365 U. S. 715 at 724. In short, the Court made a searching inquiry into what the State of Delaware, acting through the Parking Authority, had done and was doing and what this meant to the relationship between it and the private discriminating party.

It is a small step, if one at all, from *Burton* to this case. In *Burton* the State leased premises to the private party and assisted the latter in carrying on its business. Here, the State grants a liquor license to the private party and assists the latter in carrying on its functions. In *Burton* the relationship between the State and the private party was mutually beneficial. Here, as previously shown, the relationship between State and Moose Lodge is mutually beneficial. In *Burton* the State carried on certain respon-

sibilities with respect to the building. Here, the State carries on an extensive regulatory function in connection with the licensing process. Finally, in *Burton*, the profits earned and enhanced by private discrimination helped support the Parking Authority. Here, the moneys realized by Moose Lodge serve to increase Pennsylvania's general funds.

The Court's final characterization of what *Burton* involved is particularly appropriate here and bears repeating in full.

"But no State may effectively abdicate its responsibilities by either ignoring them or by merely failing to discharge them whatever the motive may be. It is of no consolation to an individual denied the equal protection of the laws that it was done in good faith . . . . By its action the Authority, and through it the State, has not only made itself a party to the refusal of service, but has elected to place its power, property and prestige behind the admitted discrimination. The State has so far insinuated itself into a position of interdependence with Eagle that it must be recognized as a joint participant in the challenged activity, which, on that account, cannot be considered to have been so 'purely private' as to fall without the scope of the Fourteenth Amendment." 365 U. S. 715 at 725.

Can less be said here where Pennsylvania, speaking through the Liquor Code and acting in conformity thereto through its Board, has placed itself behind Moose Lodge's racial discrimination and thus become a "joint participant" in this discrimination? Can Pennsylvania really say it plays no role in the challenged action when the Liquor Code says it must give and renew a liquor license to Moose Lodge despite the latter's obvious racial barriers? Is Pennsylvania truly a neutral party which provides no support for invidi-

ous discrimination? Irvis believes these questions answer themselves in view of the nature and extent of Pennsylvania's involvement.

*Reitman v. Mulkey*, 387 U. S. 369, teaches a similar lesson. California had, by referendum, added to its Constitution a provision forbidding the State (or local subdivision) from limiting the right of a person to refuse to sell or rent his property to whomever he chooses. The Court, quite correctly, described the result as more than creating "an existing policy of neutrality with respect to private discriminations," 387 U. S. 369 at 376, but rather as one which not only freed private housing discrimination from existing statutory prohibitions but also positively supported a private right to discriminate.

The Court conceded that none of its earlier decisions "squarely controls the case we now have before us," 387 U. S. 369 at 380; but it found support for its decision holding the California provision invalid in several of them. One, *McCabe v. Atchison, Topeka & Santa Fe R. Co.*, 235 U. S. 151, is of particular interest.

*McCabe* involved an Oklahoma statute which authorized railway companies to haul sleeping and dining and chair cars reserved exclusively for whites, on the one hand, or Negroes, on the other. The Court said such a statute was invalid because it permitted the private carrier to deny equal service to Negroes. The *Reitman* majority described this conclusion as "nothing less than considering a permissive state statute as an authorization to discriminate and as sufficient state action to violate the Fourteenth Amendment in the context of that case." 387 U. S. 369 at 379.

*McCabe* and the other cases, said the *Reitman* Court, "exemplify the necessity for a court to assess the potential impact of official action in determining whether the State has significantly involved itself with invidious discrimi-



nations." 387 U. S. 369 at 381. In so viewing the California provision, the Court concluded:

"Here we are dealing with a provision which does not just repeal an existing law forbidding private racial discriminations. Section 2b was intended to authorize, and does authorize, racial discrimination in the housing market. The right to discriminate is now one of the basic policies of the State. The California Supreme Court believes that the section will significantly encourage and involve the State in private discriminations. We have been presented with no persuasive considerations indicating that these judgments should be overturned." 387 U. S. 369 at 380-81.

Compare this with the present case. There is only one point of difference and it is one without consequence here. What the California constitutional provision says explicitly—the State may not forbid private discrimination in the housing market—the Pennsylvania statute says without the specific words—the Board may not forbid private discrimination by its club licensees or refuse to issue or renew a club license on the ground of racial discrimination. Through its alcoholic beverage control system, therefore, Pennsylvania involves itself in and encourages private discriminations.

Irvs takes *Reitman* to mean that while a State, if otherwise uninvolved, may choose not to abandon its uninvolved or neutral position in the face of racial discrimination, it cannot, if involved, refuse to act against discrimination or encourage it by its own position. *Burton*, in denying the State's right to "abdicate its responsibilities" by ignoring or failing to discharge them, says exactly the same thing; and we deem this rule effectively to forbid Pennsylvania from doing so here.

In one way, moreover, what the State does here goes even further in its support of discrimination than what California attempted to do in *Reitman*. There, what the State said to private persons was something like this: "Go ahead and discriminate; you are free from interference from the State." Here, the State does more. It says to Moose Lodge: "Go ahead and discriminate; you are not only free from interference from the State, you also are financially supported in your activities by the possession and use of a liquor license granted by the State." The State, in short, not only encourages discrimination by its negative proscription of State interference; it supports discrimination by conferring the liquor license on Moose Lodge.

In the discussion thus far, we have emphasized, as indicated, the role of the State in the context of the situation presented because we believe this is what the prior cases have done. In both *Burton* and *Reitman*, as well as in the sit-in cases, the position of the State in support of private discrimination appears. Elsewhere, as well, the Court has addressed itself to the import of regulation as state action.

Although far removed from the area of racial discrimination and actually involving federal, rather than state, action, *Public Utilities Commission of the District of Columbia v. Pollak*, 343 U. S. 451, bears directly on the issues of what constitutes state action and how the State's action is crucial to the decision.

Capital Transit Company (District of Columbia) placed loudspeakers in its buses. Through these loudspeakers it received and amplified radio programs. It received permission to continue this service after an investigation and hearings were conducted by the District's Public Utilities Commission. Passengers objected to the practice and brought suit.

The Court held that Capital Transit's actions in installing and operating the radio receivers involved the Government (here, Federal) to the degree that Constitutional requirements (here the First and Fifth Amendments) applied. Its language is directly relevant to the present case.

"These amendments concededly apply to and restrict only the Federal Government and not private persons . . . .

We find in the reasoning of the court below a sufficiently close relation between the Federal Government and the radio service to make it necessary for us to consider those Amendments. In finding this relation we do not rely on the mere fact that Capital Transit operates a public utility on the streets of the District of Columbia under authority of Congress. Nor do we rely on the fact that, by reason of such federal authorization, Capital Transit now enjoys a substantial monopoly of street railway and bus transportation in the District of Columbia. We do, however, recognize that Capital Transit operates its service under the regulatory supervision of the Public Utilities Commission of the District of Columbia which is an agency authorized by Congress. We rely particularly upon the fact that the agency, pursuant to protests against the radio program, ordered an investigation of it and, after formal public hearings, ordered its investigation dismissed on the ground that the public safety, comfort and convenience were not impaired thereby.

We, therefore, find it appropriate to examine into what restriction, if any, the First and Fifth Amendments place upon the Federal Government under the facts of this case, assuming that the action of Capital

Transit in operating the radio service, together with the action of the Commission in permitting such operation, amounts to sufficient Federal Government action to make the First and Fifth Amendments applicable thereto." 343 U. S. 451 at 462-63.

We take this language to apply equally to a State government under the Fourteenth Amendment, and we read it to indicate that extensive state regulatory authority provides sufficient state involvement in the affairs of the regulated party to make the latter's actions those of the State. The comparative regulatory authorities of Pennsylvania's Public Utility Commission and its Liquor Control Board, moreover, are not so different as to call for a different conclusion on this ground.

It is true, of course, that in *Pollak* the Court went on to find no violation by Capital Transit of Pollak's First and Fifth Amendment rights in its broadcasting of the radio programs. Here, however, Moose Lodge has discriminated against Irvis solely on racial grounds and thereby unquestionably violated his Fourteenth Amendment rights. The importance of *Pollak*, as in the other cited cases, lies in its emphasis in inquiring into the role of the government to determine if state or federal action has occurred.

Two lower court cases point the same way; one is quite similar to the present case. *Seidenberg v. McSorley's Old Ale House, Inc.*, 317 F. Supp. 593 (S. D. N. Y. 1970), struck a blow for women's liberation by holding that McSorley's retention of a "men only" policy denied equal protection to women in violation of the Fourteenth Amendment.<sup>20</sup> Many

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20. No statutory argument was involved because the Civil Rights Act of 1964 applied neither to discrimination on account of sex nor to taverns engaged principally in selling alcoholic beverages rather than food.

of the same issues raised here were discussed there, and the court there concentrated its inquiry into the nature of the New York alcoholic beverage control system. It found, as did the court below here, a "pervasive regulatory scheme" (317 F. Supp. 593 at 602) and concluded:

"When a state licenses such an enterprise, in an area peculiarly subject to state regulation, pursuant to a statute imposing pervasive controls upon the conduct of the business, and under circumstances in which state licensing practices endow the license with a certain franchise value as well, the state's involvement in the operation of defendant's business, and hence by implication in the exclusionary practice under attack, rises to the level of significance within the meaning of *Burton* . . . ." 317 F. Supp. 593 at 604-05.

Finding state action in these factors and finding no rational basis for the exclusion of women, the Court ruled that McSorley's must open its doors to the gentle sex.<sup>21</sup>

In *Simkins v. Moses H. Cone Memorial Hospital*, 323 F. 2d 959 (4th Cir. 1963), cert. denied, 376 U. S. 938, Negro professionals sought to require several private non-profit hospital corporations to afford them staff privileges on a non-discriminatory basis. They prevailed because the court found sufficient state involvement through the receipt and use of Hill-Burton funds by the hospitals to provide the requisite state action and because racial discrimination was

21. Judge Mansfield also noted that McSorley's was a commercial enterprise open to the public, but primarily relied on this to bolster his distinction between a liquor license and licenses granted to private persons on a comparatively unregulated basis, not to support any distinction between McSorley's license and a liquor license granted to a private club. However, the form of his conclusion, opening McSorley's to women customers rather than stripping McSorley's of its liquor license, appropriately gives significance to the distinction between a "public" licensee and a "private" one, as discussed further in part III A of this Brief.



proved. Here, once again, the major inquiry dwelt on the nature of the state's involvement.

We conclude this part of our argument with reference to a recent decision of the Court. On June 28, 1971, the Court handed down its decision in *Lemon v. Kurtzman*, 91 S. Ct. 2105, declaring state aid to certain elementary and secondary schools in Rhode Island and Pennsylvania unconstitutional. It did so because in each case it found "that the cumulative impact of the entire relationship arising under the statutes in each state involves excessive entanglement between Government and religion" in violation of the constitutional prohibition against the establishment of religion. 91 S. Ct. 2105 at 2112. These decisions should be contrasted with that in *Walz v. Tax Commission*, 397 U. S. 294, where the Court sustained a grant of tax exemption by the state to a religious body, noting that this served to reduce entanglements.

Factually, it is a substantial step from a State Liquor Control Board's grant of a liquor license to a private club pursuant to the State Liquor Code to a State Department of Public Instruction's use of public funds to "purchase" education services from parochial schools pursuant to state statute; but the legal step is not all that far. "Excessive entanglement" is not too different, if it be different at all, from "substantial involvement" or "support;" and all certainly differ in nature and extent from a single act of granting tax exemption. We suggest that this same scrutiny into the "cumulative impact" of what Pennsylvania has done in its alcoholic beverage control system leads directly to the conclusion that state action is present in Moose Lodge's acts of racial discrimination.

By granting a liquor license to this private club without regard to its invidious racial discrimination, in thereby giving something to Moose Lodge not freely available to everyone everywhere, in permitting Moose Lodge to sell alcoholic

beverages to its members, in allowing Moose Lodge to sell alcoholic beverages at times forbidden to other license holders, in extensively regulating all aspects of Moose Lodge's possession and use of the license and, above all, in engaging with Moose Lodge in a mutually beneficial (and especially so to Moose Lodge) relationship, Pennsylvania has become involved in the private racial discrimination of Moose Lodge to that "significant extent" condemned by *Burton v. Wilmington Parking Authority*, 365 U. S. 175 at 722, and *Reitman v. Mulkey*, 387 U. S. 369 at 838.

2. *The private club character of Moose Lodge does not preclude a determination that state action is present in Moose Lodge's racial discrimination.*

It is stipulated here (A. 23-24) that Moose Lodge is a private organization. Its functions take place in a privately-owned building; its activities do not involve any public functions. We assume, of course, that it properly received a building permit when it constructed its home and that its restaurant facilities meet the necessary sanitary requirements of the City of Harrisburg.

Moose Lodge considers this public aspect vs. private character dichotomy a critical one in its favor. It points to the fact that a public building was involved in *Burton*, a public function was being performed in *Pollak*, public funds were used in *Simkins* and public assistance was sought in the sit-in cases. It concludes that none of these attributes are present here. The analysis is deficient in two respects.

First, as we have just seen, the cases are almost totally devoid of reliance on the "public" characterization to support a finding of state action. Instead, the focus is almost totally on the extent and nature of the State's support, involvement or encouragement of the private discrimination.

Second, the public versus private label does not contribute to a solution in these cases because it so easily

creates confusion. What is the "public" touchstone in any case if one be sought? In *Burton* was it the public building, part of which was leased to the private restaurant; was it the fact that a private restaurant ostensibly served the public; or was it really that public support was lent to private discrimination? In *Pollak* was it the performance of a public franchise service by a private corporation; was it simply private enterprise serving the public; or was it really, again, public involvement in the private function? And in *Reitman* or *Shelley v. Kraemer*, 334 U. S. 1, where purely private housing discrimination was involved, what public aspects were attached to the private party?

In every case the difficulty is clear and reaffirms the principle that the only importance of the "public" description is in regarding the State's participation in the matter. Suppose, to illustrate further, Pennsylvania, instead of granting a liquor license to Moose Lodge, leased a State-owned building to it. Moose Lodge would still be a private club, and undoubtedly it still would claim the freedom to discriminate. Would its private nature protect it from application of *Burton*?

Or suppose Pennsylvania enacted an amendment to its State Constitution forbidding the State or any local political subdivision from passing any law or ordinance limiting the right of a private club to deny membership to any person on account of race. Would this affirmative sanction of private discrimination be any of the less invalid under *Reitman* simply because private club membership was the issue?

One last example. Suppose, instead of granting Moose Lodge a liquor license, Pennsylvania simply appropriated \$50,000 a year to it. Would this direct allocation of public funds represent a difference in legal consequence from the grant of the financially supportive liquor

license? Does it makes any difference that Moose Lodge is a private club in either instance?

We submit the answers are obvious. The private nature of Moose Lodge is not the pivotal factor any more than is a labeling of some aspect of the situation as "public". Were Pennsylvania to eliminate all of its regulation of the liquor business and were it to issue licenses freely to all applicants, without restriction as to locale and number, but by statute could only issue the licenses to applicants which served only whites on the one hand, or only non-whites, on the other, would the fact that Moose Lodge operated from privately-owned premises, performed no public functions and received no direct allocation of public funds entitle it to receive a liquor license under these conditions? Irvis suggests not—and for only one reason. Because *what the State would thereby do* would support racial discrimination by private licensees.

Such rejection of explicit reliance on the public aspect of the activity in which the discrimination took place appears in the Court of Appeals decision in *Commonwealth v. Brown*, 392 F. 2d 120 (3rd Cir. 1968), cert. denied, 391 U. S. 921. In this, the second Girard College case, the District Court, 270 F. Supp. 482 (E. D. Pa.) had relied on the fact that Girard College was performing an educational function to sustain its decision requiring admission of non-whites. The Court of Appeals disavowed such reliance. Instead, it found state action not in the function Girard College was performing but in the appointive and supervisory role of the State probate court (i.e. in what the State was doing).

This, Irvis submits, is the proper approach. It avoids the pitfalls inherent in Moose Lodge's position, and it adheres to the decisional guidelines laid down by the Court.



**C. The Distinction Made by the Court Below Between a Racially Discriminating Private Fraternal Organization and Private Organizations Which Limit Participation on the Basis of Shared Religious Affiliation or a Mutual Heritage in National Origin Is a Sound One If the Limitation Is Reasonably Related to the Otherwise Valid Purposes of the Organization.**

In its opinion (A. 40) the court below drew a distinction between private clubs such as Moose Lodge and those which limit participation to persons of a "shared religious affiliation or a mutual heritage in national origin." In its Brief (pp. 77-83) Moose Lodge refers to this distinction as involving an "egregious error." While we do not agree with the breadth of the language used by the court below, we believe that the distinction which it attempted to draw has a valid basis in law.

The statement made by the court below in its opinion undoubtedly was drawn from discussion engaged in between it and counsel at both of the oral arguments before it. The discussion began with a reference to the irrationality of the exclusionary practices engaged in by Moose Lodge in light of its stated purposes; and since this irrationality is at the heart of the position taken by Irvis on this question, it might be well to refer once again to the objects and purposes of Moose Lodge.

These appear on p. 22 of the appendix. Without repeating them in full, we can confidently state that they represent purposes almost exclusively fraternal in import. They clearly do not represent any purpose based upon a common religious bond or a common heritage in national origin. But, participation in these purposes is limited to "white persons."

We begin with a question. What is there about objects and purposes of a fraternal nature which call for



them to be limited to white persons? Is there some rational connection between limiting membership to white persons and carrying out fraternal purposes? We believe it is the element of rational connection between the limitation and the purposes which must be investigated in every instance, which is totally lacking in Moose Lodge's case and which the court below was attempting to indicate was present in other organizations.

We are dealing with discrimination. Discrimination, as such, means nothing. It is "invidious discrimination" which is condemned, and our inquiry is "whether the State has significantly involved itself with invidious discriminations." *Reitman v. Mulkey*, 387 U. S. 369 at 380. We suggest that the idea of irrationality is intimately entwined with the concept of invidious discrimination. Hence, in the case of Moose Lodge, we discern no rational connection between the purposes of the organization and its membership limitation to white persons; and, thus, we must condemn its limitation as involving invidious racial discrimination.

There is one other element of the inquiry. The Court has indicated its special concern for discriminations based on racial grounds. To this end, the court below cited (A. 40) the language of *Loving v. Virginia*, 388 U. S. 1 at 10, where the Court said: "The clear and central purpose of the Fourteenth Amendment was to eliminate all official state sources of invidious (racial discrimination in the states." This is not an isolated statement. In *Hunter v. Erickson*, 393 U. S. 885 at 391-92, the Court said: "... racial classifications are 'constitutionally suspect,' ... and subject to the 'most rigid scrutiny,' ... They 'bear a far heavier burden of justification' than other classifications ... ." These cases are not offered to support a distinction between discrimination on racial grounds and discrimination on religious or ethnic grounds, as Moose Lodge

indicates (Brief, p. 77). These cases simply say that, where racial classification or discrimination is found, it will be scrutinized more closely and will be viewed with greater suspicion than will the classifications or discriminations based on other criteria.

We already have seen that on absolute grounds Moose Lodge's discriminatory classification fails the test. With or without rigid scrutiny, its limitation of membership to white persons, in light of its stated objects and purposes, is invidious. When we turn to other organizations, similar judgments cannot be made easily or lightly.

Moose Lodge has cited numerous organizations which limit their membership, some on religious grounds, some on political grounds, and some on grounds of ethnic heritage. We do not propose to examine each of these organizations. We do suggest, however, that the standard which must be applied to determine whether or not the limitations on membership of each of these organizations is or is not an invidious one is the same in every case. It may be phrased thusly: Viewing a racial limitation as particularly suspect, is the membership limitation reasonably related to the actual objects and purposes of the organization.

In this standard there are three elements. One is the already mentioned lesson of *Loving* and *Hunter* that racial classifications are especially suspect. The second is the already mentioned principle that the limitation must be reasonably related to the purposes of the organization. The third is embodied in use of the word "actual." In this we suggest that there must always be present a determination that the purposes and objects of the organization are stated and followed in good faith. If the element of good faith is lacking, then an apparent reasonable relationship between limitation and purposes cannot stand. We perceive no difficulty in administering this proposition for the court has already shown that it can penetrate the "sham" club. *Daniel v. Paul*, 395 U. S. 298.

We do not hesitate to advance this proposition despite Moose Lodge's expression of doubt (Brief, pp. 81-82). The fact that one's heritage is European and that European heritage may be limited to a particular racial type is not of itself sufficient to support a finding of invidious discrimination in a limitation based upon a particular European heritage. If the limitation is a reasonable one in light of the objects and purposes of the organization and if the objects and purposes, as well as the limitation, meet the test of good faith, then there is no reason, as Irvis sees it, for a finding that the discrimination is "invidious."

To illustrate this approach, we select one of the many organizations listed by Moose Lodge: The National Capital Democratic Club (of Washington). We do not know what the stated objects and purposes of this organization are, but we shall assume that they are to further the political fortunes and governmental principles of the Democratic party and that membership is limited to members of the Democratic party. If these assumptions are correct, then the membership limitation is a perfectly reasonable one; and the exclusion of members of other political parties cannot be considered improper. However, if we go further and assume that the membership is limited not just to members of the Democratic party but to white members of the Democratic party (or, as an alternative, Catholic members of the Democratic party), then the exclusionary provision bears no relationship to the objects and purposes of furthering the fortunes and principles of the Democratic party; and the limitation must be considered invidious.

We can reverse the view which we take of this exclusionary concept. Rather than regarding a limitation as discriminating against certain groups or persons, we can consider a valid limitation as, in fact, rationally establishing a common positive bond among persons who have a common goal which is furthered by the common membership.

bond. In this sense the limitation is not exclusionary or discriminatory in any invidious way; rather, it contributes to and supports the valid purposes of the organization. When tested in this fashion, as well, Moose Lodge fails.

Moose Lodge has cited (Brief, p. 79) *Schwartz v. Board of Bar Examiners*, 353 U. S. 232 at 238-239, in support of its position. However, we read this case as supporting, in fact, exactly the position we have set forth in this statement of the situation. When the court said "... but any qualification must have a rational connection with the applicant's fitness or capacity . . .", it establishes the same basis for testing a discriminatory provision as Irvis advances here. That is, any provision of any kind which seeks to classify persons, or to exclude some while including others, is not necessarily bad; it is bad only if the exclusion has no "rational connection" with the purpose of the classification. When the court went on to say "... an applicant could not be excluded [from the practice of law] merely because he was a Republican or a Negro or a member of a particular church . . .", it gave voice to the same test which Irvis advances here. We conceive that the Court has set no different standard.

The court below was too abrupt in its expression of this position. We do not support this expression absent the qualifications expressed in this discussion. However, what we suggest is that there is a line which can be drawn and that this Court has shown itself capable and skilled in so doing. Adherence to the tests of rationality and good faith to determine whether or not a particular discrimination is invidious will assure that what Moose Lodge (Brief, p. 82) fears—"... the destruction of the great majority of private clubs in the entire nation . . ."—will not happen. Only those whose discrimination is invidious and who have called upon the State to support them in their discrimination will be affected.



### III. The Decree of the District Court Was Appropriate and Proper and Gave Effect to the Constitutional Considerations Involved Here.

In his complaint, Irvis sought a decree from the court below that those provisions of the Pennsylvania Liquor Code which authorized and required the issuance and renewal of a club liquor license to Moose Lodge be declared in violation of the Fourteenth Amendment, that the Pennsylvania Liquor Control Board be enjoined from issuing or renewing a club liquor license to or for Moose Lodge (as well as ordered to revoke its existing license) and that the Board be ordered to adopt regulations embodying the position that no license will hereafter be issued or renewed to a private club which discriminates on the basis of race or color. The court below did not go so far as to adopt all of these requests. Rather, it limited its decree to ordering the termination and cancellation of the license of Moose Lodge and to enjoining the Board from issuing any license to Moose Lodge as long as the Lodge continued its policy of racial discrimination. By so doing, it limited the immediate effect of its decision to the case which was actually before it and thereby dealt not inappropriately with the evidence which had been presented to it by the parties. Nevertheless, its decree is of state-wide importance to the administration of Pennsylvania's liquor laws.

Moose Lodge has argued not only that the decree, even if based upon valid constitutional considerations, goes too far (Brief, pp. 83-86), but also that the decree is invalid because it infringes upon basic constitutional rights of Moose Lodge and its members (Brief, pp. 45-59). These arguments, however, fail to give proper consideration, in the first instance, to the extent of the constitutional violation found to exist by the court below and, in the second instance, to the proper nature and effect of the constitutional



right of private association. In fashioning its decree, the court below gave effect to both of these considerations.

**A. The Presence of State Action in Moose Lodge's Racial Discrimination Requires Severance of the Relationship Between the State and Moose Lodge.**

Once having determined that there was state action in the racially discriminatory acts of Moose Lodge, the court below was confronted with the problem of fashioning an appropriate decree to enforce its decision. In this respect it faced the same problem as did the district court in *Seidenberg v. McSorley's Old Ale House, Inc.*, 317 F. Supp. 593 (S. D. N. Y. 1970). The *Seidenberg* court, faced with a public tavern, where no private rights intruded, determined that the proper relief was to require McSorley's to open its doors to women. Here, the District Court, recognizing that Moose Lodge, as the parties had stipulated, was in fact a private organization, drew a line which gave effect to that aspect of the case and at the same time met the inevitable demand of its determination that state action was present.

Thus, rather than seeking an absolute end to the private discrimination, the District Court sought an end to the presence of the state action. This severance of the relationship between the state and Moose Lodge without impinging upon Moose Lodge's right to discriminate was the only logical approach to take.

1. *Termination and cancellation of Moose Lodge's liquor license subject to reissue if it reverses its policy of racial discrimination appropriately effects this severance.*

In its decree the lower court accomplished two things. First, it directed the Board to "terminate and cancel" the club liquor license issued by it to Moose Lodge. Second, it

directed the Board not to issue a club liquor license to Moose Lodge as long as the Lodge continued its policy of racial discrimination. While the Pennsylvania Liquor Code is not a model of clarity in this respect, it is Irvis' belief that use of the words "terminate and cancel" is meant to reflect a certain action short of "revocation" and that, by so doing, the court below placed the parties in a position where the statutory requirements accompanying a revocation would not apply.

Section 471 of the Liquor Code (appendix F, page 59) confers power upon the Board to suspend or revoke licenses. This lengthy provision contains, among other language, the following:

"Any licensee whose license is revoked shall be ineligible to have a license under this act until the expiration of three years from the date such license was revoked. In the event the Board shall revoke a license, no license shall be granted for the premises or transferred to the premises in which the said license was conducted for a period of at least one year after the date of the revocation of the license conducted in the said premises, except in cases where the licensee or a member of his immediate family is not the owner of the premises, in which case the Board may, in its discretion, issue or transfer a license within the said year."

In the context of a private club license, this language clearly prevents the licensee from obtaining a new license for at least a period of three years following the revocation.

On the other hand, the Code contains no specific language regarding the meaning and effect of the words "terminate and cancel." However, by analogy to the situation described in Section 468(b) of the Code (appen-

dix F, p. 57) which deals with the disposition of a license when the licensee becomes insolvent, etc., and which states in such case that the license shall immediately "terminate and be cancelled" we find authority for the view that no time limit is set upon the possibility of having a license reissued for the premises if the Board so determines. Again, in the regulations of the Board, regulation 115, section 115.13 (appendix F, p. 156) where the Board deals with the situation in which a licensee obtains a different type of license to cover the same premises for which he already holds a license, the language states that the old license "must be surrendered to the Board for cancellation."

We have in these two examples indications that there is a procedure for removing a license from a licensee which does not involve the sanctions attendant upon a revocation. It is reasonable to apply this procedure in the present case because, first, revocation is a penalty prescribed for violations of certain provisions of the Liquor Code, something which is not involved here; and, second, because the demands of this case only require that the relationship between the Board and Moose Lodge be severed subject to the possibility of being renewed if Moose Lodge wishes to change its discriminatory policies.

This is what the decree of the court below appropriately accomplishes. By effecting a termination and cancellation of Moose Lodge's liquor license, it avoids the effects of a revocation; it avoids any implication that Moose Lodge has engaged in a violation of the Liquor Code itself; it places the license in a position to be reissued promptly to the same licensee for the same premises; it effects the necessary severance of the relationship between the Board and Moose Lodge in order to eliminate State action from Moose Lodge's racial discrimination;

it does not force the members of Moose Lodge to give up any constitutional right they might have of private association; and it leaves to the members of Moose Lodge themselves the final decision as to whether they wish to regain the liquor license for the club. In all respects, therefore, it would seem that the court below followed a position best calculated to accomplish the necessary severance without unduly penalizing Moose Lodge.

2. *A decree enjoining the Liquor Control Board from enforcing its regulation 113.09 would not afford proper relief for the Constitutional violation present here.*

It is an odd feature of this case that a point not mentioned by either party was raised by the court below in its opinion to support the decision it had already reached regarding the presence of state action in Moose Lodge's discriminatory policies. Regulation 113, section 113.09, of the Board's regulations states: "Every club licensee shall adhere to all of the provisions of its Constitution and By-Laws." The court below referred to this section of the regulations as indicating the State's direction that Moose Lodge must follow the discriminatory provisions of its own Constitution and By-Laws.

While a fair reading of the opinion of the court below indicates that the court would have reached the same decision regardless of the presence of this provision of the regulations, Moose Lodge argues (Brief, p. 85) that the court below erred in two respects in its treatment of this issue. First, it contends that the purpose of the regulation is to give effect to the Constitutionally protected rights of "privacy and of association" that are involved in the existence of a private club. This position, however, is contrary to what Moose Lodge has already indicated to be the purpose of this section of the regulation—an indication



of purpose with which Irvis, in fact, agrees. As Moose Lodge states on page 84 of its Brief, the purpose of this provision "is purely and simply, and plainly the prevention of subterfuge." It goes on to point out that there are several problems attendant upon the existence and operation of a private club with which the Liquor Code is properly concerned. One of these is the concern that the private club be in fact a "private" licensee and not a place open to the public, in view of the special privileges given to private clubs (particularly with respect to hours of sale). The second of these concerns, closely allied to the first, is that the private club truly be a membership organization and not a "one-man club" devote to the generation of profit for a single individual or several individuals. Section 113.09 of the regulations is one of several ways in which the Board seeks to meet these problems; it has no other purpose. For this reason Irvis did not argue that this regulation acts as a direction to a private club to discriminate, and he does not agree with the indication of the court below to this effect.

Second, Moose Lodge contends (Brief, p. 85) that the decree of the lower court should have been fashioned simply to enjoin enforcement of this regulation to the extent that it "purports to implement discriminatory qualifications for membership . . . ." In this way, says Moose Lodge, the State would not be in the position of supporting any restrictive membership provision. We take this position of Moose Lodge to mean that it believes the only proper decree which should have been entered by the court below was a decree which simply enjoined the Board from enforcing this regulation to the extent indicated.

This contention of Moose Lodge would be acceptable if, and only if, the court below had based its decision simply on the view that Regulation § 113.09 constituted a State



direction to discriminate. This, however, is a palpably incorrect reading of the decision of the court below. That decision was based upon the extensive regulatory authority exercised by the Board over its licensees and upon the benefits flowing to the licensee from the possession and use of the liquor license. The reference to section 113.09 of the regulations was not necessary to the decision, and a decree which does no more than enjoin the Board from enforcing this provision would do nothing towards effecting the severance of the state action from the racial discrimination found to be present here. If the Board were enjoined only from enforcing this provision, there would still remain the extensive regulatory authority exercised by it over its licensees; and there would still remain the substantial economic benefits enjoined by Moose Lodge from its possession and use of the liquor license, as well as the economic benefit flowing to the Commonwealth of Pennsylvania through the purchases and license fees contributed by Moose Lodge. In short, all of the elements upon which this case is based, elements which the court below found determinative to its finding of state action in the discrimination of Moose Lodge, would remain intact; and the decree would be totally ineffective.

We suggest a counter-proposal. We suggest, simply, that another paragraph should have been added to the decree which was actually entered. This paragraph would read as follows:

"Defendants, the Pennsylvania Liquor Control Board, its members, William Z. Scott, Chairman, Edwin Winter and George R. Bortz, and their successors, are hereby permanently enjoined and restrained from enforcing section 113.09 of regulation 113 of the Pennsylvania Liquor Control Board to the extent that regulation has the effect of requiring any private club retail liquor

licensee to adhere to any racially discriminatory provisions of its Constitution and By-Laws."

The addition of such a paragraph to the decree would have the effect of removing any problem with respect to the impact of section 113.09, would leave the section intact with respect to all matters not involving racial discrimination and, at the same time, would appropriately not interfere with the required severance of relationship between the State and Moose Lodge as long as the latter followed its policy of racial discrimination. Therefore, even if some action with respect to section 113.09 is considered necessary or desirable, certainly no more than this is required.

**B. No Constitutionally Protected Right of Private Association Is Impinged Upon by the Termination of Moose Lodge's Liquor License.**

In presenting its argument with respect to the right of private association protected by the Constitution (Brief, pp. 45-59), Moose Lodge has submitted a tripartite argument. First, it contends that the constitutional right of privacy and private association applies to membership in a private club. Second, it states that Moose Lodge is a private club. Third, it argues that to deprive Moose Lodge of a State license "because its members exercise their constitutional rights of privacy" (Brief, p. 55) would violate the constitutional rights of the members of Moose Lodge.

We set aside the second of these points since it is a stipulated fact that Moose Lodge is a private club (A. 23). Moreover, we agree with the basic application of the first of these points as it has been expressed in the two cases cited by Moose Lodge (Brief, pp. 45-46), *Bell v. Maryland*, 378 U. S. 226 at 313 and *Evans v. Newton*, 382 U. S. 296 at 298-99. We agree with this right of private association because this right is encompassed in the constitutionally

protected right to freedom of assembly. We agree with it notwithstanding its reflection of an aspect of human nature which debases our national purpose, thwarts full participation of all our citizens in our national life and furthers a sense of inferiority among those excluded.<sup>22</sup>

But, we do not agree that the right of private association asserted here by Moose Lodge includes within its scope the right to retain its liquor license in the face of its racial discrimination or that, assuming for the moment that there is some fragment of such a subordinate right present here, it is unduly infringed upon when balanced against the racial discrimination practiced by Moose Lodge.

1. *The right of an individual to select his own associates in accordance with his own likes and dislikes and to join whatever group he chooses does not include a right to compel the State to grant his group a license to sell alcoholic beverages to its members.*

Proper consideration of the right to private association requires consideration of the nature of the right and what it protects. In *Bates v. Little Rock*, 361 U. S. 516 at 528, the writers of the concurring opinion note that among those rights protected by the First and Fourteenth Amendments, "one of those rights, freedom of assembly, includes of course freedom of association . . . ." Thus, what confronts us here is an aspect of that right to congregate freely with whatever associates one chooses. The Court has been vigilant in sustaining that right, but nothing it has said in

22. Baltzell makes the following point about exclusionary club admission policies: ". . . in contrast to the dominant majority of Anglo-Saxon Protestants who dismiss the matter as a 'private and personal problem,' the members of minority groups are keenly sensitive to institutionalized exclusion of members of their own groups regardless of their 'merits and manners.'" Baltzell, E. Digby, *The Protestant Establishment—Aristocracy & Caste in America* (New York, 1964) p. 368.

doing so applies to the situation presented here. Without exception, application of the right of private association has been sustained to protect a free expression of political beliefs and interests, not to support the right of a private group to realize economic benefits through the sale of alcoholic beverages to its members (see Brief of Moose Lodge, p. 56).

Thus, in *N. A. A. C. P. v. Alabama*, 357 U. S. 449, the Court was confronted with an attempt by the State to compel a private organization to produce its membership lists. The Court stated its concern:

“Effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association, as this Court has more than once recognized by remarking upon the close nexus between the freedoms of speech and assembly . . . . It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the ‘liberty’ assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech . . . . Of course, it is immaterial whether the beliefs sought to be advanced by association pertain to political, economic, religious or cultural matters, and state action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny.” 357 U. S. 449 at 460-61.

In the context of the case before it, the Court stated “. . . Compelled disclosure of affiliation with groups engaged in advocacy” may restrain freedom of association and, further, “Inviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs.” 357 U. S. 449 at 462. Having

thus delineated the scope of the right of private association, the Court went on to balance the requirements of this right with the interest of the state in compelling disclosure of membership by the organization and found that the state had no such controlling justification for its interest that would override the right of association.

The court has never deviated from this approach. In *Bates v. Little Rock*, 361 U. S. 516, the court dealt with a municipal license tax ordinance requiring the submission of membership lists. Upon objection of a private organization, the court stated "And it is now beyond dispute that freedom of association for the purpose of advancing ideas and airing grievances is protected by the Due Process Clause of the Fourteenth Amendment from invasion by the States." 361 U. S. 516 at 523. Once again, the Court found no overriding state interest in requiring the disclosure of membership in the context of collecting a local tax which would override the protected right of private association.

In *Williams v. Rhodes*, 393 U. S. 23, certain restrictive provisions of Ohio's election laws were challenged. The court pointed out that "... the right of individuals to associate for the advancement of political beliefs . . ." is included in the First Amendment's protection of freedom of association. 393 U. S. 23 at 30.

No other case, including *Gibson v. Florida Legislative Investigation Committee*, 372 U. S. 539, has viewed the right of private association in any different light. Protection of the right to band together for the advancement of jointly-held beliefs and ideas lies at the core of the protected right. The extent of the protection may be broad indeed (including the rights to engage in political advocacy, union organization, and lobbying, see discussion in *N. A. A. C. P. v. Button*, 371 U. S. 415 at 416); but it has



never been extended to protect the right of a private organization to retain a liquor license granted to it by the state.

Possession and use of a liquor license does not result in the advancement of protected ideas and beliefs. It is, purely and simply, a grant by the state of something economically beneficial to the recipient. That it is to be granted at all is something within the determination of the state, and we consider it unarguable that Pennsylvania could amend its Liquor Code to provide that no liquor licenses should be granted to private clubs at all.<sup>23</sup> If it did so, exactly the same consequences would follow for Moose Lodge; but no right of private association would be infringed. True it may be that Moose Lodge may "sustain a loss of membership and its capability of carrying on its benevolent purposes would be seriously impaired" and true it may be that Moose Lodge's "capability of contributing to the purposes of the Supreme Lodge would be seriously impaired." But these would not follow as a result of the State's refusal to grant a liquor license; they would follow from the voluntary decision of the members of the Moose Lodge that their right of private association in furtherance of its benevolent purposes and the purposes of the Supreme Lodge was not really so important to them. In essence, the members are saying that they do not value the purposes behind a right to private association as much as they value the right to obtain alcoholic beverages.

No more is present here. The pleasure of obtaining a drink at the club bar may indeed be a valuable pleasure to the member and a matter of economic necessity to the club. It may even be that without its liquor license Moose Lodge may find itself in financial difficulty, and its mem-

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23. By withdrawing all club licenses the State would simply place itself in a neutral position. See *Evans v. Abney*, 396 U. S. 435.

bers may find the club not as attractive as they did when liquor was available at the premises. But the right of the members to assemble together for the expression of ideas and beliefs is not prohibited or thwarted by anything the state has done; it is impeded, as stated above, only by the members' individual decisions not to participate. We submit that extension of the principles announced in the cases upholding the rights of members of the N. A. A. C. P. and other organizations (none of which, to Irvis' knowledge, held liquor licenses granted by the state or, indeed, asserted any right to obtain or hold such a license) to associate for the advancement of their ideas and beliefs is unwarranted.

Protection of the associational rights of individuals in order to advance mutually-held rights and ideas which the state may seek to suppress, either directly or indirectly, has been granted by this court in a variety of situations, as noted above. Never, however, has this court gone as far as it is being asked to go here. Given the reason for the right of private association and the scope which has been afforded it by the decisions of the Court, we find no invasion of this right by the withholding or withdrawal of a state-granted liquor license.

2. *Even if such a right might be deemed to include the right to possess and use a liquor license, it must give way when balanced against Irvis' right to be free from State-supported racial discrimination.*

Assuming for the moment, however, that there does exist within the scope of the right of private association some subsidiary element which protects Moose Lodge in the possession and use of its liquor license, the essential facts remain that it practices racial discrimination and receives the support of the State in doing so. The issue then be-

comes one of balancing the right of Moose Lodge to retain the license against the right of Irvis not to be discriminated against in a way which has the support of the State. This is the approach which the Court has followed in all of the above-cited cases involving the right of private association, for in each case it has balanced the right of the organization to be free from harassment against the right of the State to inquire legitimately into the affairs of the organization. We consider this approach a valid one, notwithstanding the fact that we do not have here a balancing of group versus state, but rather a balancing of group versus individual.

How, then, should this balancing be accomplished in any given situation? We suggest the following approach as a valid one. Where the right of private association is asserted by members of a group seeking to advance ideas and beliefs flowing from their exercise of the right of free speech and the right of free assembly (e.g., political advocacy), then the protection afforded them through granting primacy to the freedom of private association should be recognized; and possible discriminatory consequences flowing from the granting of this protection should be endured. On the other hand, where the right of private association is asserted in order to advance common social or fraternal interests, it should not be given precedence over racially discriminatory actions taken in furtherance of such common interests. We believe this approach would give adequate protection to the competing rights involved and afford proper deference to the statement of principles set forth in *N. A. A. C. P. v. Alabama*, 357 U. S. 449 at 460-61; quoted above (p. 94).

If this approach is a sound one, its application to the present case inevitably leads to subordinating any right enjoyed by members of the Moose Lodge to associate together in social and fraternal activities to the right of Irvis

not to be subjected to discrimination because he is a Negro. We believe this approach is sound, does give proper effect to whatever competing constitutional considerations are involved here and should be adopted by the Court if it finds any validity to the claim made by Moose Lodge in this respect.

Finally, we offer one more factor which bears upon this balancing process. Without denying the right of individuals to associate freely with whomever they please and to enjoy privacy within the confines of their private clubs, we suggest that the analogy between private club and private home drawn by Moose Lodge in its reference (Brief, p. 48) to *Griswold v. Connecticut*, 381 U. S. 479, is a doubtful one. It becomes even more doubtful when the private club is a large one, national in scope, like the Moose. The values attendant upon preservation of privacy in the home simply do not apply to the situation involved in an organization like Moose Lodge. In this we agree with the statement of Justice Harlan, dissenting in *Poe v. Ullman*, 367 U. S. 497 at 551-52:

"Certainly the safeguarding of the home does not follow merely from the sanctity of property rights. The home derives its preeminence as the seat of family life. And the integrity of that life is something so fundamental that it has been found to draw to its protection the principles of more than one explicitly granted Constitutional right."

Can the same be said of the relationship between individual member and Moose Lodge? We believe that to ask the question answers it.



**IV. This Case Is Not Affected by Congressional Passage of the Civil Rights Act of 1964 Providing in Title II for Injunctive Relief Against Discrimination in Places of Public Accommodation and Excepting Private Clubs.**

In passing the Civil Rights Act of 1964 Congress responded to a Presidential call for civil rights legislation and produced an Act dealing with a number of areas in which discrimination prevailed. One of these areas was concerned with eliminating barriers to equal access to places of public accommodation, and Congress' determination of what to do and how far it should go in so doing is embodied in Title II of the Act. One limitation it did make explicit was contained in § 201(e) which provided an exemption for private clubs.

Other limitations also exist with respect to Title II. It neither purports to be nor is a legislative enactment fully exercising Congress' powers with respect to the matters dealt with; nor is it a Congressional expression of constitutional line-drawing between rights of privacy and private association; on the one hand, and the right to be free from discriminatory state action, on the other. The specific exception for private clubs can best be understood simply as expressing Congress' view that application of the provisions and remedies of Title II of the Civil Rights Act of 1964 was not there appropriate and that discriminatory actions by private clubs are to be redressed by other means.

We believe the history of the Act, as reflected in executive comment, legislative discussion and judicial review, support these conclusions and that determination of the present case depends upon resolution of the matters previously discussed.



**A. The Legislative History and Judicial Treatment of Title II Support the Conclusions That No Constitutional Limits Were Drawn by Congress in Excepting Private Clubs From Its Coverage and That Private Racial Discrimination Constituting State Action Remains Subject to Redress as It Did Prior to Passage of Title II.**

No review of Title II is complete which fails to consider all aspects of its enactment and review as well as the bases for Congressional authority to proceed. We say "bases" because, contrary to the statement in Moose Lodge's brief (p. 86) that the Civil Rights Act of 1964 was "a measure passed to enforce the Fourteenth Amendment," it is quite clear that another purpose existed with respect to Title II and that this other purpose was not only paramount but provides a key to the extent of the power exercised by Congress in passing Title II. We turn, first, to the history of Title II and then to its scope and application.

*1. President Kennedy's message.*

President Kennedy's message to Congress in June, 1963, requesting enactment of civil rights legislation is printed as House of Representatives Document 124, 88th Congress, 1st Session. It contains (pp. 3-5) a lengthy plea for passage of legislation providing for equal accommodations in public facilities. It contains not a word about private clubs.

Near the end of this section, however, President Kennedy clearly expressed the dual Constitutional foundation on which his recommendations rested:

"Clearly the Federal Government has both the power and the obligation to eliminate these discriminatory practices: first, because they adversely affect the

national economy and the flow of interstate commerce; and secondly, because Congress has been specifically empowered under the 14th Amendment to enact legislation making certain that no State law permits or sanctions the unequal protection or treatment of any of its citizens." (H. R. Doc. 124, 88th Cong., 1st Sess., p. 5).

## 2. Congressional response.

H. R. 7152 was introduced in the House to implement the President's proposals and was referred to the Judiciary Committee. A Subcommittee (known as Subcommittee No. 5) of the Judiciary Committee held hearings on the bill. Among those testifying was the Attorney General who stated that Title II was based "primarily" on the Commerce Clause and also on the Fourteenth Amendment. Hearings before Subcommittee No. 5, House Judiciary Committee, 88th Cong., 1st Sess., 1375-1376, 1388, 1391-1410, 1417-1419.

Subcommittee No. 5 reported a broader Title II. It included in the coverage of establishments supported by State action (comparable to the enacted § 201(d), 42 U. S. C. § 2000a(d)) all businesses operating under State "authorization, permission, or license." Hearings, House Judiciary Committee on H. R. 7152, as amended by Subcommittee No. 5, 88th Cong., 1st Sess., 2656. The Attorney General, again testifying, objected to this and urged that Congress not rely on the Fourteenth Amendment generally but specify what establishments would be covered. Hearings, pp. 2656, 2675-2676, 2726.

All this time the private club exception remained intact. If nothing else, therefore, it is reasonably arguable that in light of the action of Subcommittee No. 5 in referring to a "State license," the private club exception provided an ex-

pression of legislative intent not to extend coverage to private clubs but did not reflect any constitutional considerations.

H. R. 7152 was reported to the full House accompanied by a Report of the Judiciary Committee, H. R. Rep. 914, 88th Cong., 1st Sess. As clearly illustrated by Part 2 (pp. 9-15) of that Report, containing the joint views of supporting Republican Committee members, the Commerce Clause formed a substantial basis of Constitutional support for Title II.

The Committee Report itself, at p. 18, explicitly reveals the not unlimited scope of Title II:

"No bill can or should lay claim to eliminating all of the causes and consequences of racial and other types of discrimination against minorities . . . .

It is, however, possible and necessary for Congress to enact legislation which prohibits and provides the means of terminating the most serious types of discrimination."

Additional views were appended to the Committee Report by Representative Meader. He discussed the Subcommittee proposal, referring (at p. 51) to the "license" language and to the Attorney General's reaction that such an addition "represents an effort to go the full limits of the constitutional power contained in the 14th Amendment." He noted the Attorney General's comment that this language could cause Title II to apply even to law firms. Once again, the lack of reference to the private club exception may at least be viewed as indicating a legislative determination that Congress' constitutional powers should not be extended to private clubs even though this could be done.

Debate on the House floor was not lengthy. It further supports the position that Title II was limited in scope.

That it covered neither all places of public accommodation nor all establishments in which discrimination may be "supported" by the State, but rather aimed at the specific categories defined in § 201(b), is evident in the comments of Congressman Cellar, one of its chief supporters, and in one of the memoranda appended by him to his comments (110 Cong. Rec. 1520, 1525).

The lurking concern about the now-removed "State license" language reappears, however, in the comment of Congressman Tuck who charged that proponents of Title II would make licensing a sufficient indication of State support to constitute State action (110 Cong. Rec. 1586). Once again, there is at least an indication that legislative policy, not constitutional inhibitions, lay behind these decisions and that both the elimination of "licensing" and the still-untouched exception for private clubs simply reflect Congressional intent to leave these areas to other means of redress.

H. R. 7152 went directly to the Senate floor where it was debated for 83 days (see comment of Representative Madden at 110 Cong. Rec. 15869). Moose Lodge has accurately reported (Brief, pp. 89-97) the extent of the discussion on private clubs. While we agree that the private club exception was established with little or no debate or opposition, we find nothing in this reported material which suggests any more than Congress, as a matter of legislative policy, decided not to extend Title II to private clubs.

Despite this seeming clarity, an occasional question arose. Senator Russell charged that Title II would "open every private club in this country to any person who is a member of one of the minority groups covered by this bill" (110 Cong. Rec. 4744). Senators Javits and Humphrey hastened to correct him by referring to § 201(e) but not mentioning any constitutional impediments (110 Cong. Rec. 4755, 6534).

Fairly read, we believe the unusually extended and comprehensive legislative history of H. R. 7152 provides only two clear conclusions for present purposes. First, the primary constitutional authority relied upon by Congress to sustain passage of Title II was Art. I, § 8, cl. 3, of the Constitution, the Commerce Clause. Second, nothing in the hearings, committee reports or debates justify a contention that in providing an exception for private clubs Congress was doing any more than evidencing its decision on a matter of legislative policy rather than constitutional authority. Judicial treatment of Title II supports these conclusions.

### 3. Judicial review.

Title II came before the Court promptly following enactment. It was sustained by a unanimous Court in *Heart of Atlanta Motel, Inc. v. United States*, 379 U. S. 241, as a proper exercise by Congress of the power given Congress under the Commerce Clause. The opinion of the Court expresses several conclusions pertinent here.

First, the Court expressly determined that Title II was based both on the Commerce Clause and the Fourteenth Amendment, that Congress "possessed ample power" to proceed under the former and that it was not necessary for the Court to pass upon Congress' power under the latter. 379 U. S. 241 at 249-250.

Second, nothing in the *Civil Right Cases*, 109 U. S. 3, purported to deal with Congress' power under the Commerce Clause; consequently, those cases are irrelevant to the issue of Congress' authority to pass Title II. 379 U. S. 241 at 252. Nevertheless, as the opinion in those cases pointed out, Congressional power to deal with matters affecting interstate commerce is plenary; and in exercising such power Congress may "pass laws for regulating the subjects specified in every detail, and the conduct and



transactions of individuals in respect thereof." 379 U. S. 241 at 251-52.

Third, in exercising its powers under the Commerce Clause, Congress may legislate against moral and social wrongs such as racial discrimination. 379 U. S. 241 at 257.

This opinion unquestionably supports the position stated above that Title II was not just an enactment designed to enforce the Fourteenth Amendment. To the contrary, its paramount source of authority was the Commerce Clause. In addition, the opinion, like President Kennedy's message and the legislative history which preceded it, is devoid of any indications that Congress either was intent upon drawing or actually did draw a fine constitutional line between rights of privacy and private association and the right to be free from state-supported racial discrimination. In view of Congressional reliance on the primary authority of the Commerce Clause, it would be difficult, if not impossible, to reach any other conclusion.

Finally, and most significant, is the indisputably valid fact that given Congress' plenary power to take whatever action is appropriate to achieve its legitimate purpose of ending the obstructions which racial discrimination poses to the free flow of commerce, Congress certainly has the power to deal with and to regulate purely private actions in its furtherance of this end. This being so, Congress, had it so wished, could have included private clubs within the boundaries of Title II. That it chose not to do so can only be considered an expression of policy by it and not an indication of constitutional limits.

A further indication that the Court does not view Title II as limiting any right of action which an individual had, prior to Title II's passage, to redress a deprivation of his Constitutional rights appears in note 5 of the Court's opinion in *Adickes v. S. H. Kress and Company*, 398 U. S. 144 at 150. Miss Adickes' claim, like Irvis' here, was

brought under 42 U. S. C. § 1983. The Court noted that the violation complained of would also support an allegation that Kress and Company had violated Title II. However, the Court concluded that the two provisions were entirely separate and that "there can be recovery under § 1983 for conduct that violates the Fourteenth Amendment even though the same conduct might also violate the Public Accommodations Title . . . ." We take this to mean, at least, that private racial discrimination constituting state action is subject to redress under § 1983 as it has always been and that if this is so with respect to conduct also covered by Title II, it must be so with respect to conduct not covered by Title II. Irvis' action here, therefore, seeking only to enjoin further State support for discrimination and not to end Moose Lodge's privately-chosen segregation, is not precluded by anything contained in Title II, including the exception for private clubs.

**B. The Existence of Alternative Constitutional and Statutory Bases for Attacking Racial Discrimination by Private Clubs Makes It Unlikely That Congress, in Adopting Title II, Would Have Been Concerned With Marking a Boundary Between the Right of Private Association and the Fourteenth Amendment Right to Be Free From State-Supported Racial Discrimination.**

For Congress to have been sufficiently preoccupied with the rights of privacy and private association arising from private club membership to have marked a constitutional barrier in its adoption of § 201(e) of the Civil Rights Act of 1964 requires, at least, acceptance of the view that Congress would hardly do such a thing unless its action were meaningful. We have seen above that, first, it does not appear Congress did draw a constitutional line and, second, Con-

gressional power under the Commerce Clause is sufficiently extensive to permit it to act against discrimination by private clubs wholly apart from considerations affecting its powers under the Fourteenth Amendment. We conceive of Congressional authority in this respect as being limited only by the proper boundaries of its Commerce Clause power; and if its actions thereunder are justified, any resulting impingement on associational rights would have to give way.

Similarly, we believe other authority also exists for attacking private club discrimination.

The Thirteenth Amendment provides that slavery shall not exist within the United States and that Congress shall have power to enact legislation to enforce this provision.

This extinction of slavery was absolute and self-executing. "By its own unaided force and effect," the Thirteenth Amendment "abolished slavery and established universal freedom." *Civil Rights Cases*, 109 U. S. 3 at 20. The Thirteenth Amendment "is not a mere prohibition of State laws establishing or upholding slavery, but an absolute declaration that slavery or involuntary servitude shall not exist in any part of the United States." *Ibid.*

Congress' power to implement this Amendment allows it "to pass all laws necessary and proper for abolishing all badges and incidents of slavery in the United States." *Ibid.* This includes the power to enact laws "direct and primary, operating upon the acts of individuals, whether sanctioned by State legislation or not." *Id.* at 23. And the "varieties of private conduct which [Congress] may make criminally punishable or civilly remediable extend far beyond the actual imposition of slavery . . . ." *Griffin v. Breckenridge*, 91 S. Ct. 1790 at 1799-1800.

All of these pronouncements of the meaning of the Thirteenth Amendment, made in an 1883 decision, remain valid as ever today. *Jones v. Mayer Co.*, 392 U. S. 409 at 438-39.

We know of no case directly construing the Thirteenth Amendment which has explicitly equated its self-executing scope with Congress' power to enforce it. That is, the Court has not specifically declared that the Amendment itself not only abolished slavery but also abolished all "badges and incidents" of slavery. Nevertheless, it is no great step from what already has been declared to this position; and it would be consistent with the breadth and purpose of the Thirteenth Amendment so to hold.

We have no hesitancy in declaring that the invidious racial discrimination practiced by private clubs is a "badge and incident" of slavery. It is demeaning to our Negro citizens and represents a contemporary prolongation of the pre-Thirteenth Amendment white attitude toward the Negro. We also believe that the intent and scope of this Amendment is such that it must be given overriding significance when it conflicts with other constitutional guarantees. Even allowing, however, for possible balancing when First Amendment rights of free speech and free assembly are involved, we find nothing in this case, where the purposes of the private club are fraternal, to warrant giving the Thirteenth Amendment any narrower effect.

But we go one more step. Even apart from any self-executing effect of the Thirteenth Amendment, we have shown that Congress' power to enact legislation abolishing all "badges and incidents" of slavery is unqualified. From this, two comments follow.

First, Congress is unlikely to have engaged in a delicate constitutional effort by inserting § 201(e) into the Civil Rights Act of 1964, even were (as it is not) Title II based solely upon Fourteenth Amendment considerations, since it has the power under the Thirteenth Amendment to pass legislation affecting private interests, individual and group, without feeling such concern. We state this,

assuming for the moment that Congress has not actually pursued its Thirteenth Amendment powers.

But, second, this is only a temporary assumption. Title 42 U. S. C. § 1981 has been part of our statutory law since 1866 when it was enacted as part of the Civil Rights Act of 1866 in substantially the same language as it now contains. See *U. S. v. Wong Kim Ark*, 169 U. S. 649. It states:

"All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind; and to no other."

This provision applies to private parties; no state action need be shown. See *Jones v. Mayer Co.*, 392 U. S. 409. It can reasonably be argued that the relationship between an individual and his club is a contractual one (dues exchanged for facilities); that, being so, it is subject to § 1981; and that racial discrimination in such contract is prohibited by § 1981.

We see, therefore, that Congress itself has ample power to act directly against racial discrimination in private clubs. Not only the Commerce Clause, but the Thirteenth Amendment, gives it this power. As already stated, whatever judicial balancing of rights is required in such circumstances, the associational interests present here do not entail objects and purposes which should prevail over the purpose of ending racial discrimination.

We suggest, therefore, that not only did Congress not in fact draw a constitutional boundary in excepting private



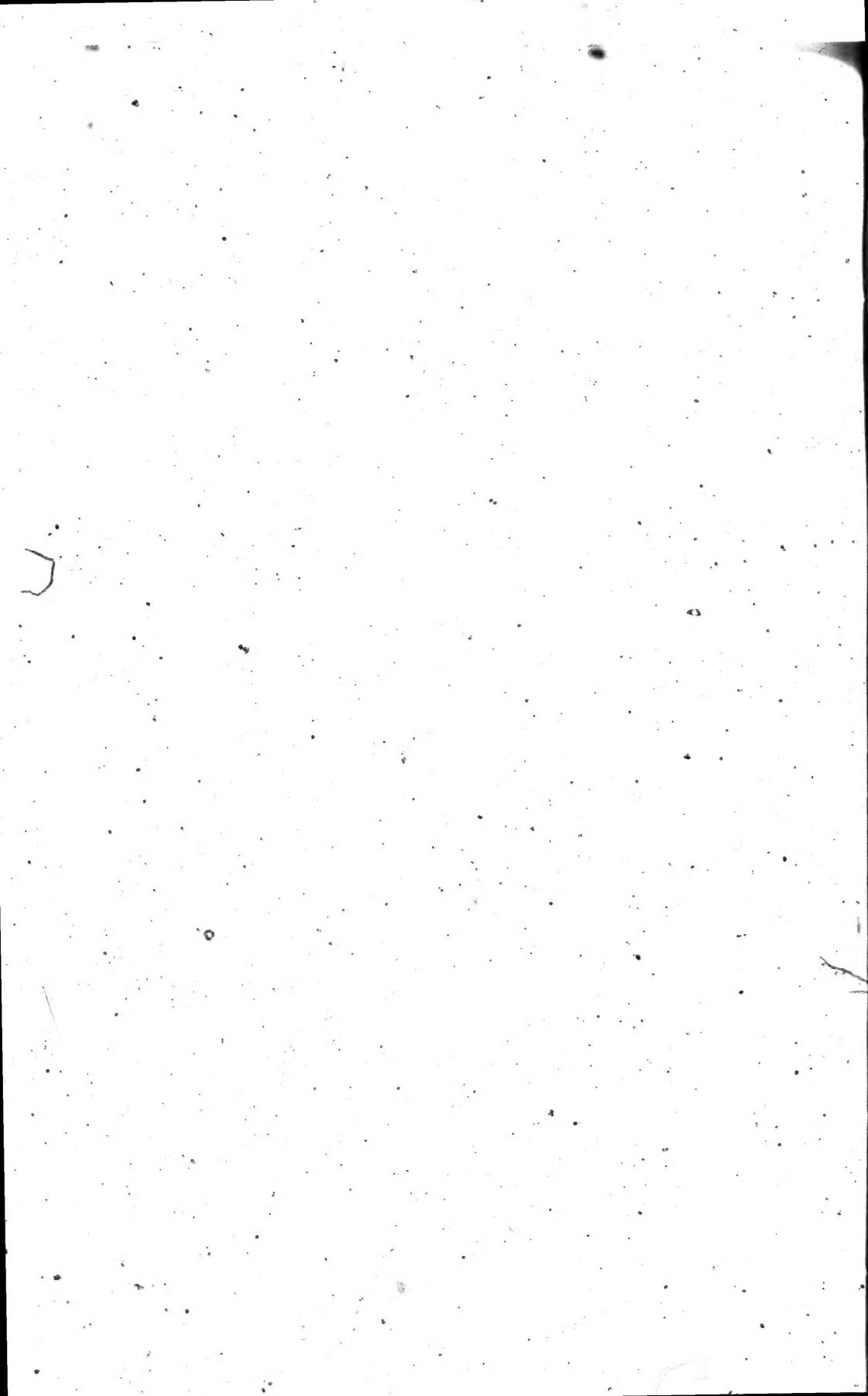
clubs from Title II of the Civil Rights Act of 1964 but that the existence of these other constitutional and statutory bases for action against discrimination negate any conclusion that it was attempting to do so. Section 201(e) is simply an expression of a legislative decision that private clubs (like unmentioned private homes) were not to be considered places of public accommodation.

### **CONCLUSION.**

The court below correctly determined that there was State action in the invidious racial discrimination practiced by Moose Lodge, and its judgment should be affirmed.

Respectfully submitted,

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U.S. DISTRICT COURT, D.C.

FILED

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IN THE

**Supreme Court of the United States**

**No. 70-75**

MOOSE LODGE No. 107,

*Appellant,*

—v.—

K. LEROY IRVIS; *et al.*,

*Appellees*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

**MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE*  
AND BRIEF OF THE LAWYERS' COMMITTEE  
FOR CIVIL RIGHTS UNDER LAW**

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*Civil Rights Under Law*

IN THE  
**Supreme Court of the United States**  
No. 70-75

---

MOOSE LODGE No. 107,

*Appellant,*

—v.—

K. LEROY IRVIS, *et al.*,

*Appellees.*

---

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

---

**Motion for Leave to File Brief *Amicus Curiae***

The Lawyers' Committee for Civil Rights Under Law hereby respectfully moves for leave to file the attached brief *Amicus Curiae*. The Committee supports affirmation by the Court of the decision of the lower court that the grant by the State of Pennsylvania to Moose Lodge No. 107 of a club liquor license was in violation of the Equal Protection Clause of the Fourteenth Amendment.

The Lawyers' Committee for Civil Rights Under Law is organized as a not-for-profit corporation. Partly through a paid staff, but primarily through the volunteer services of members of the private bar, the Committee actively assists citizens in asserting and enforcing their civil rights. The thrust of the Committee's activities is to seek for these citizens the full measure of the protection of the law against racial discrimination.

The Committee maintains ten offices throughout the United States as well as a national headquarters in Wash-

ington, D.C. A Board of Trustees of some one hundred lawyers guides the national activities of the Committee, with smaller boards or steering committees directing the local offices. The membership of the national Board of Trustees represents a cross-section of the American bar, as do the hundreds of attorneys who have volunteered to handle civil rights cases under the auspices of the Committee since its inception in 1963. Participants in Committee activities include single practitioners as well as the range from young associates to senior partners in law firms of all sizes. The Committee numbers among its national and local members fifteen presidents of the American and National Bar Associations, including both incumbents, and two former Attorneys General of the United States.

The Committee has requested consent by Appellant and Appellee to the filing of a brief *Amicus Curiae*. Appellee has not consented. Appellant has declined to consent. The Committee, therefore, moves pursuant to Rule 42(3) for leave to file the annexed brief *Amicus Curiae*.

1. The interest of the Committee in this case arises from its dedication to and interest in implementation of Constitutional guarantees of civil rights. As described above, the Committee has for the past eight years been an active participant in this nation's effort to eradicate the stain of racial discrimination.

2. The Committee proposes, in its brief *Amicus Curiae*, to address itself to a matter of immediate and major interest to the Committee, that is, the Court's standards for determining whether the Equal Protection Clause of the Fourteenth Amendment precludes a State from granting a liquor license to an organization which engages in racial discrimination. In the event that the Court accepts juris-



(iii)

diction in this case, decision by the Court on the merits will no doubt mark a major step in the evolution of the law, concerning the implications of State involvement in private acts of racial discrimination.

3. The Committee believes that the decisional criteria employed by the lower court, and the thrust of Appellee's argument, would, if adopted by the Court, lead to an unacceptably quantitative standard for ascertaining the existence of State action prohibited by the Equal Protection Clause. The Committee believes that its interests in the outcome of this litigation can be adequately represented only if the Court considers the argument that the Equal Protection Clause of the Fourteenth Amendment prohibits a State from taking action, other than to discharge a governmental responsibility owed to all of its citizens, that has the effect of authorizing or enhancing private discrimination. The Committee understands that Appellee does not propose to make this argument to the Court. Thus, the interests of the Committee will not be adequately represented unless the Committee is granted leave to file the annexed brief.

Respectfully submitted,

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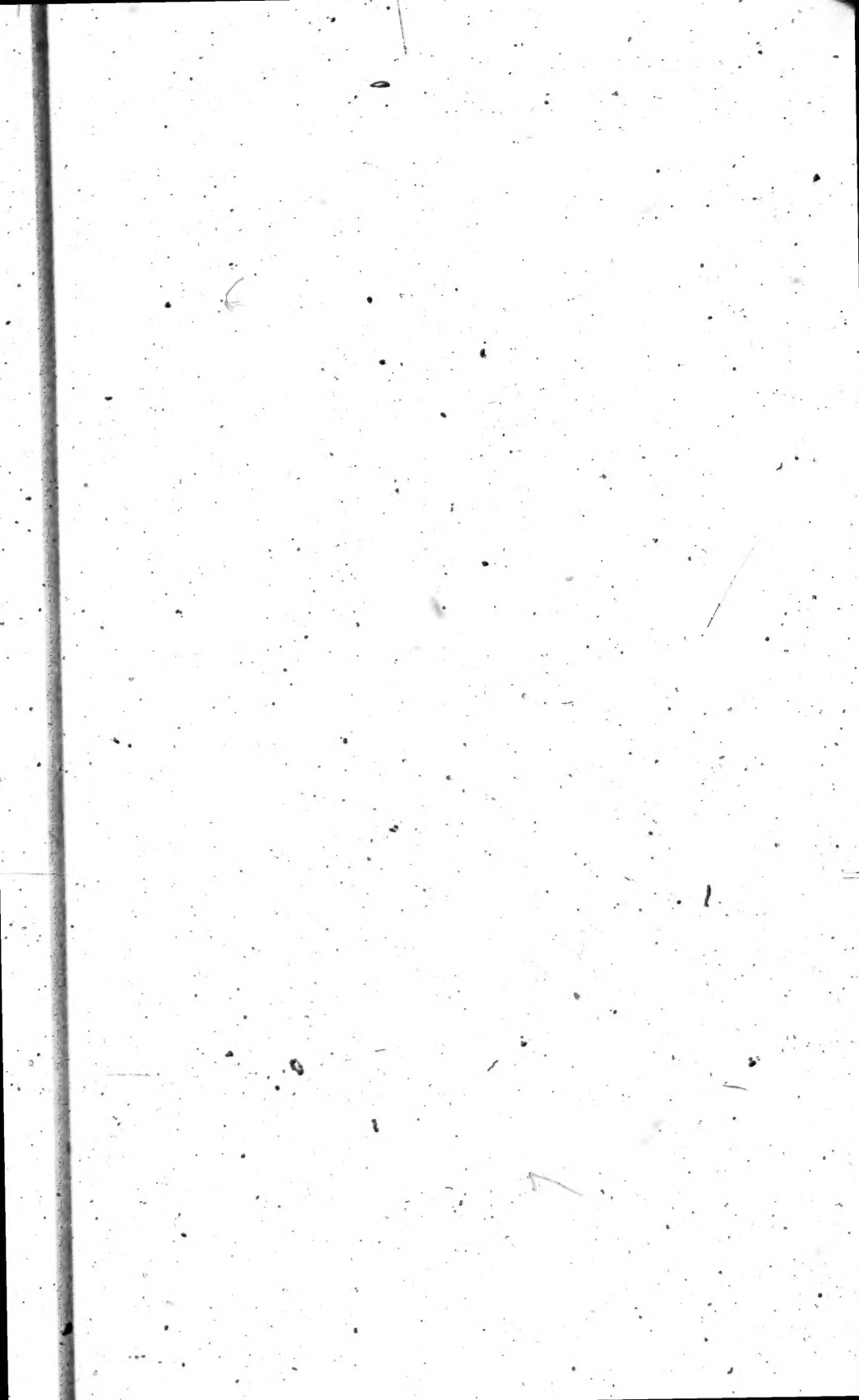
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IN THE  
**Supreme Court of the United States**

**No. 70-75**

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MOOSE LODGE No. 107,

*Appellant,*

—v.—

K. LEROY IRVIS, *et al.*,

*Appellees.*

---

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

---

**BRIEF OF THE LAWYERS' COMMITTEE  
FOR CIVIL RIGHTS UNDER LAW**

This brief is submitted by the Lawyers' Committee for Civil Rights Under Law as *Amicus Curiae*.

**INTEREST OF AMICUS**

The Lawyers' Committee for Civil Rights Under Law is organized as a not-for-profit corporation. Partly through a paid staff, but primarily through the volunteer services of members of the private bar, the Committee actively assists citizens in asserting and enforcing their civil rights. The thrust of the Committee's activities is to seek for these citizens the full measure of the protection of the law against racial discrimination.

The Committee maintains ten offices throughout the United States as well as a national headquarters in Washington, D.C. A Board of Trustees of some one hundred



lawyers guides the national activities of the Committee, with smaller boards or steering committees directing the local offices. The membership of the national Board of Trustees represents a cross-section of the American bar, as do the hundreds of attorneys who have volunteered to handle civil rights cases under the auspices of the Committee since its inception in 1963. Participants in Committee activities include single practitioners as well as the range from young associates to senior partners in law firms of all sizes. The Committee numbers among its national and local members fifteen presidents of the American and National Bar Associations, including both incumbents, and two former Attorneys General of the United States.

The interest of the Committee in this case arises from its dedication to and interest in implementation of Constitutional guarantees of civil rights.

### STATEMENT

*Amicus* agrees with the proposition, as stated in *Burton v. Wilmington Parking Authority*, 365 U.S. 715, 722 (1961), that "to fashion and apply a precise formula for recognition of state responsibility under the Equal Protection Clause is an impossible task." The potential range of the Court's inquiry for discerning state action in violation of the Equal Protection Clause was described by Mr. Justice Frankfurter in his separate opinion in *Terry v. Adams*, 345 U.S. 461, 473 (1953):

"The vital requirement is State responsibility—that somewhere, somehow, to some extent, there be an infusion of conduct by officials, panoplied with State power . . ."

The unavailability of "readily applicable formulae" has led the Court, in assessing nonobvious involvement of the

State in private conduct, to engage in "sifting the facts and weighing the circumstances" to determine whether the Equal Protection Clause has been violated. *Burton, supra*, 365 U.S. at 722, 725. *Amicus*, in these terms, wishes to address itself to the dimensions of the sieve and the scale which may be employed in this process.

## ARGUMENT

**The Equal Protection Clause of the Fourteenth Amendment Prohibits a State From Taking Any Action, Other Than to Discharge a Governmental Responsibility Owed to All of Its Citizens, That Has the Effect of Authorizing or Enhancing Private Discrimination.**

### I.

This case involves implementation of a State liquor regulatory and licensing scheme which has the effect of sustaining a private fraternal organization which, in its membership and guest policies, engages in racial discrimination. The State of Pennsylvania consciously authorized Moose Lodge No. 107, while reaping the economic benefits of a valuable grant extended by the State, to make a discriminatory classification based on color.

The question before the Court is not whether the Moose Lodge or its members may, individually or jointly, engage in acts of racial discrimination.<sup>1</sup> Nor, *Amicus* submits, is the question merely whether the relevant activities of the State of Pennsylvania, through its liquor licensing and

<sup>1</sup> *The Civil Rights Cases*, 109 U.S. 3 (1883), "embedded in our constitutional law" the principle that the Equal Protection Clause "erects no shield against merely private conduct, however discriminatory or wrongful." *Shelley v. Kraemer*, 384 U.S. 1, 13 (1948) (emphasis added); *Burton, supra*, 365 U.S. at 721.

regulatory process, are sufficient in frequency and magnitude, to make the State an unconscious partner or actual participant in the discriminatory practices of the Moose Lodge. *Amicus* suggests that the Equal Protection Clause precludes a State from undertaking *any* affirmative action, other than to discharge a governmental responsibility owed to all of its citizens, that has the effect of authorizing or enhancing private discrimination.

## II.

There can be no question that we are here dealing with "state action". The State has acted. It has enacted a liquor code, under authority recognized by the Twenty-first Amendment.<sup>2</sup> In implementation of this enactment, the State has extended to a private organization—racially exclusionary in its membership and guest policies—the valuable authority to sell liquor by the drink. The State itself could not form and operate a club which discriminated against individuals on the ground of their race. The question, of course, is whether the State's action here was such as to warrant attribution to the State of the private club's discriminatory practices. As in *Burton v. Wilmington Parking Authority*, *supra*, 365 U.S. at 722, and *Reitman v. Mulkey*, 387 U.S. 369, 378 (1967), this case presents an instance of "nonobvious involvement of the State in private conduct."

<sup>2</sup> Under the Twenty-first Amendment, a State has "full authority to determine the conditions upon which liquor can come into its territory and what will be done with it after it goes there . . ." *United States v. Frankfort Distilleries, Inc.*, 324 U.S. 293, 299 (1945); *Joseph Seagram & Sons, Inc. v. Hostetter*, 384 U.S. 35, 42 (1966). The Court has described "commerce in intoxicating liquors" as commerce "over which the Twenty-first Amendment gives the States the highest degree of control." *Nippert v. Richmond*, 327 U.S. 416, 425 n. 15 (1946).

There is no requirement that the State involvement in private action, to be violative of the Equal Protection Clause, "be either exclusive or direct. In a variety of situations the Court has found state action of a nature sufficient to create rights under the Equal Protection Clause even though the participation of the State was peripheral, or its action was only one of several co-operative forces leading to the constitutional violation." *United States v. Guest*, 383 U.S. 745, 755-56 (1966) (citations omitted); *Terry v. Adams*, *supra*: Nor is it necessary here to show that the State enactment or action is itself racially motivated. As stated in *Palmer v. Thompson*, — U.S. —, 91 S.Ct. 1940, 1945 (1971), the focus is properly "on the actual effects of the enactments." Here, the effect of the enactment, as implemented by the State itself, was not only to authorize private racial discrimination but, in fact, to provide the economic underpinning for the discrimination. (See Jurisdictional Statement, p. 18; A 19-20, 25)

### III.

The court below utilized essentially quantitative measures to determine whether equal protection of the laws has been denied to Appellee Irvis by the State. The court relied primarily on the "all-pervasiveness" of the Pennsylvania Liquor Code to conclude that the State, in the terms of *Burton*, *supra*, has "insinuated itself into a position of interdependence" with its private club licensees. (A 34)

Because of the likely effect of this case on other litigation now under way in State and Federal courts involving State roles in aid of private acts of racial discrimination,<sup>3</sup>

<sup>3</sup> As suggested by Mr. Justice Blackmun in his concurring opinion in *Palmer v. Thompson*, *supra*, 91 S.Ct. at 1947: "In isolation this litigation may not be of great importance; however, it may have significant implications." Numerous examples of related litigation

*Amicus* urges that the Court take pains to avoid resting its decision in this case on a primarily quantitative assessment of the relevant State role or action. However "pervasive" may be the interaction of the State and the private roles in the discriminatory scheme, it suffices that the State exercised its discretion to extend a valuable privilege in support of what the State must have known to be racially discriminatory acts.

The Twenty-first Amendment did not have the effect of recognizing a right of individuals or organizations to dispense liquor for pay. Rather, the Twenty-first Amendment restored to the States their comprehensive authority to regulate intra-state liquor commerce as they deemed appropriate. See n. 2, *supra*. A liquor license—particularly one entailing the opportunity to profit from the sale of liquor—is unquestionably a privilege, and not a right. Appellant has stipulated in this case that "the receipt and ownership of such a license is a valuable privilege granted to a club" by the State. (A 25, 4) Grant of such a privilege is an act of discretion by the State.

Appellant has sought to reduce to an absurdity the lower court's application of Equal Protection prohibitions to Pennsylvania's extension of liquor dispensing privileges to the Moose Lodge. Appellant suggests, for example, that the lower court's ruling would require the recipient of a marriage license to accept any person as a spouse, regardless of race and regardless of the license recipient's choice. Appellant argues that it is no less prohibited "state action" to license a marriage in which the participants engage in racial discrimination than it is to extend the

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are set forth in Appellant's Memorandum In Opposition to the Motion to Affirm (pp. 3-4) and in the *Amicus* briefs filed in support of Appellant.



privileges of liquor sales to a racially discriminating fraternal organization.

Appellant's argument is but an extreme postulation of the proposition: "Is it prohibited state action to furnish public utilities, or police and fire protection, which has the effect of sustaining private racial discrimination?" The answer lies in the distinction between State activities, in the nature of grants or services, which by law or tradition the State is bound to furnish to all citizens, and those State grants which are in the nature of privileges.<sup>4</sup> A liquor license, under the Pennsylvania statute, falls in the latter category.

There is no Constitutional or Federal statutory provision imposing an affirmative duty on the State to authorize private sales of liquor. Nor is the authorization of private liquor sales a response to a duty under which, like the furnishing of police and fire protection or a marriage license, a State is required by law or tradition to furnish to every one of its citizens.<sup>5</sup> Thus, the State of Pennsylvania would be required to permit a speaker, in exercise of his First Amendment rights, to use a public hall even if that speaker sought to advocate separation of the races. And the State would be required to furnish police protection to every individual or group regardless of their private beliefs or predilections.

But the State is not required by law to authorize or provide the economic support for an individual or group by permitting the sale of liquor. *Amicus* submits that the State is precluded by the Equal Protection Clause from such an authorization where its effect would be to sustain racial discrimination.

<sup>4</sup> The rationale of *Palmer v. Thompson*, *supra*, serves as a useful analytical tool for recognizing this distinction.

<sup>5</sup> See, e.g., *Loving v. Virginia*, 388 U.S. 1, 12 (1966).

**CONCLUSION**

**The judgment of the District Court should be affirmed. The grant by the State of Pennsylvania to Moose Lodge No. 107 of a club liquor license was in violation of the Equal Protection Clause of the Fourteenth Amendment.**

Respectfully submitted,

**JOHN T. RIGBY**

**ARNOLD & PORTER**

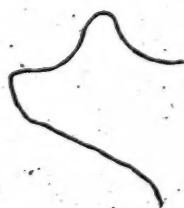
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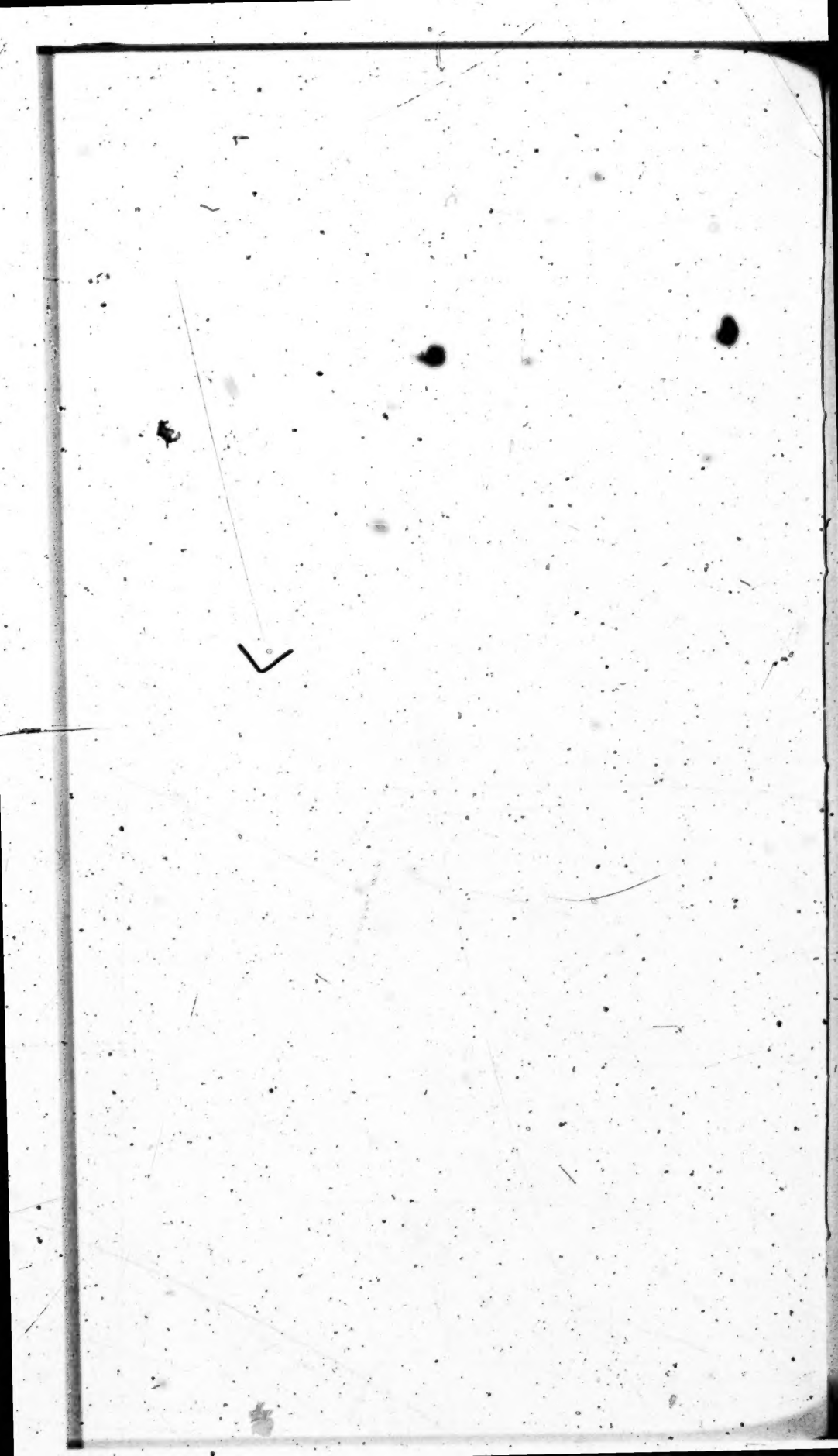
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**In the Supreme Court of the  
United States**

No: 70-75

MOOSE LODGE NO. 107,

*Appellant*

**K. LEROY IRVIS and WILLIAM Z. SCOTT,**  
Chairman, EDWIN WINNER, Member, and  
GEORGE R. BORETZ, Member, LIQUOR CON-  
TROL BOARD, COMMONWEALTH OF PENN-  
SYLVANIA,

*Appellees*

*On Appeal From the United States District Court  
for the Middle District of Pennsylvania*

**BRIEF FOR APPELLEES, WILLIAM Z. SCOTT,**  
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GEORGE R. BORETZ, Member, LIQUOR CON-  
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**QUESTION PRESENTED**

1. Is the licensing and regulation, under an extensive and pervasive state regulatory scheme, of an organization that refuses to dispense goods and services to persons on the grounds of their race, "state action" in violation of the equal protection clause of the Fourteenth Amendment?

## STATEMENT

There are some 4,238 "clubs" which are licensed by the Pennsylvania Liquor Control Board (LCB) to dispense alcoholic beverages on their premises to members and their guests for a price. As defined by the "Liquor Code", 1951, April 12, P. L. 90, Art. I, §101, 47 P.S. §1-101 et seq., a "club" is any non-profit association of any reputable group of individuals formed for purposes of mutual benefit, entertainment, fellowship or lawful convenience, having some primary interest to which the sale of alcoholic beverages is only secondary. The Code further provides that "clubs" so licensed must hold regular meetings, conduct its business through regularly elected officers, admit members by written application, charge and collect dues, maintain records and may waive and reduce dues for servicemen. LCB Regulation §113:09, requires "every club licensee shall adhere to all of the provisions of its constitution and by-laws." The obvious purpose of the above-cited provisions is to assure that liquor licensees holding "club" licenses are *bona fide* clubs and not in fact taprooms or bars having the appearance of a club but availing themselves of the special and highly valued privileges of a "club" license. These provisions demonstrate how pervasive and extensive regulations must be once the State has entered the field of licensing clubs to dispense liquor.

• That liquor licensees who sell alcoholic beverages for on the premises consumption are highly regulated



has been fully described by the Court below and in the briefs of the appellants and appellees. See 318 F. Supp. 1246, at pp. 1248-1250, and pp. 8-9 of Appellee Irvis' brief. That special privileges pertain to "club" licensees is evident from statutory provisions which permit them to remain open for liquor sales for longer hours than other licensees. The club licensee may sell alcoholic beverages on Sunday but unlike the non-club licensee is not required to have a substantial food business. 47 P.S. §4-406 and Act No. 27, 1971 Session of the Pennsylvania General Assembly. See Appellee Irvis' brief, pp. 59-60.

The facts of this case are agreed. Moose Lodge No. 107 holds a "club" license issued by the LCB. Appellee Irvis, as a guest of a member of Moose Lodge No. 107, was refused service of an alcoholic beverage solely on the ground that he is a Negro (A. 6). Moreover, as a member lodge of the Loyal Order of Moose, Irvis is barred from membership as a result of the provisions of the constitution and bylaws of this order which restrict membership in Moose Lodges to male Caucasians and male Caucasians married to female Caucasians. These provisions completely bar Irvis from availing himself of the highly regulated privileges extended by the club license and conferred by this Commonwealth on Moose Lodge No. 107. This bar arises solely on the grounds of his race.

The Court below held that refusal of Moose Lodge No. 107, in the context of the pervasive and extensive liquor regulatory scheme of Pennsylvania, was State action in violation of the equal protection clause of the Fourteenth Amendment. The Court declared

the club license of Moose Lodge No. 107 invalid and further indicated that the statutes authorizing licensing of clubs by the LCB were unconstitutional insofar as they countenanced the racial discrimination complained of.

It is the position of the Commonwealth that the racial discrimination complained of was State action in violation of the equal protection clause of the Fourteenth Amendment of the United States Constitution. The logical corollary of this position is that the statutes and regulations regulating and licensing clubs are unconstitutional insofar as they authorize the LCB to license clubs which discriminate in the sale of alcoholic beverages on the grounds not permitted by the Fourteenth Amendment. It is submitted that the Commonwealth, by virtue of the monopoly power it exercises over the entire liquor business, the pervasive and extensive nature of its regulatory scheme and the special privileges it confers on club licensees has inextricably involved and identified itself in the affairs of such clubs. As a consequence, the liquor dispensing activities of exclusionary clubs bear the mark of "state action" and foster the suspicion and distrust of government which is dysfunctional to governmental process and anathema to the concept of a democratic society.

## Summary of Argument

5

### SUMMARY OF ARGUMENT

Moose Lodge No. 107 holds a "club" license issued by the Pennsylvania LCB. As a licensee it is subjected to continuous and close regulation of its affairs by the LCB. Moose Lodge No. 107 discriminates by refusing to serve alcoholic beverages to Negroes.

There is substantial authority emanating from this Court and lower federal courts holding that such discriminatory activity constitutes State action in violation of the equal protection clause of the Fourteenth Amendment. The policy rationale of such authority is that when a State extensively regulates an area of activity or undertakes in large measure to perform activities in a particular area but also permits private persons or organizations who are regulated or participating in the governmental activities to discriminate, the State, by its regulation of or participation in such activities has itself promoted discrimination. This rationale recognizes that there is a substantial gray area between prohibited discriminatory activity by "purely" state agencies and officials and permissible discriminatory activity by "purely" private individuals. The rationale also recognizes that the purposes of the Fourteenth Amendment could be easily avoided should its prohibitions extend only to discriminatory activity of officials who are elected or appointed by law and agencies which are created and operate under law and the officers of which are established by law.

This rationale is applicable to this case. By licensing clubs which discriminate the Commonwealth is promoting discrimination in an area where it has expressed a strong and abiding interest, it has circumscribed the activity of its licensees by numerous regulations and statutory provisions and conferred special benefits on such licensees. To categorize the discriminatory activities of club licensees in the context of such a regulatory scheme as "private" for purposes of the equal protection clause comes close to making its prohibitions against official discrimination a sham.



## Argument

### ARGUMENT

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It is anathema to a system of government, which has as its fundamental doctrine the equality of all citizens before the law, any doctrine which categorizes some of its citizens as inferior to others. Racism, in the form of *de jure* segregation of blacks and whites, *Brown v. Board of Education*, 347 U.S. 483 (1954), denial of governmental benefits and services on the grounds of race, *Evans v. Newton*, 382 U.S. 296 (1966), racially restrictive covenants, *Shelley v. Kraemer*, 334 U.S. 1 (1948), racially exclusionary clauses in the governing provisions of clubs and organizations, or the racially exclusionary practices of labor unions, *Ethridge v. Rhodes*, 268 F. Supp. 83 (S.D. Ohio E.D. 1967), and persons maintaining places of public accommodation, 42 U.S.C. §2000a-1, should not be actively encouraged or fostered by duly constituted government. In viewing "state action" under the Fourteenth Amendment the question should not be what are the areas in which racism and racist activities are permitted but to what extent have the powers of and benefits conferred by the State been used to promote activities which are invidiously discriminatory. Where the powers exercised or benefits conferred by the State are substantial and direct and go beyond a mere failure to prohibit or refusal to regulate, the conclusion should be that the discriminatory activity in question has risen to the level of state action in violation of the Fourteenth Amendment.



There are few difficulties and many advantages to be derived from such an approach. The constitutional rights of privacy and expression no doubt permit individuals and groups to harbor bigoted ideas and to express these ideas publicly, *Adickes v. Kress and Co.*, 398 U.S. 144, 169 (1969). Beyond these interests there is nothing to be gained by government affirmatively aiding the encouragement of racism. Rather emasculation of the purposes of the Fourteenth Amendment may be avoided and much of the apparent chaos in case law surrounding the "state action" concept can be explained.

In *Burton v. Wilmington Parking Authority*, 365 U.S. 715 (1961), this Court held that discrimination on the grounds of race by a tenant-coffee shop located on the premises of a parking garage owned by the Parking Authority was "state action" in violation of the equal protection clause. Mr. Justice Clark wrote:

"Because the virtue of the right to equal protection of the laws could lie only in the breadth of its application, its constitutional assurance was reserved in terms whose imprecision was necessary if the right were to be enjoyed in the variety of individual-state relationships which the Amendment was designed to embrace. For the same reason, to fashion and apply a precise formula for recognition of state responsibility under the Equal Protection Clause is an impossible task' which 'This Court has never attempted.' [citation omitted] Only by sifting facts and weighing circumstances can the nonobvious involvement of the State in private conduct be

attributed its true significance." (365 U.S. at 722, 81 S. Ct. at 860.)

Prompting this holding, was the presence of several factors indicating substantial involvement of the State with the proscribed discriminatory activity. The factors were that the municipal authority had constructed and was operating the facility in which the coffee shop was located; they had leased premises to the coffee shop; and both the coffee shop and Parking Authority derived immediate benefits from one another's presence in the garage.

In *Griffin v. Maryland*, 378 U.S. 130 (1964), five black youths, who purchased tickets, attempted to ride a carousel in a privately owned amusement park and were arrested by a private detective who was acting on orders by the park management. The private detective had also been deputized by the local sheriff and apparently had attempted to act pursuant to this authority also. This Court held that the detective's function of carrying out the instructions of the private owners and his deputization by the local sheriff made his activity state action in violation of the equal protection clause.

State action was again found to be present when the public trustees of a racially exclusionary park were replaced by private trustees so that the park would continue to be managed on an exclusionary basis. *Evans v. Newton*, 382 U.S. 296 (1966).

Additionally, numerous lower court opinions have attempted to describe the parameters of state action. In *Ethridge v. Rhodes*, 268 F. Supp. 83 (S.D. Ohio, E.D. 1967), the District Court held that a state's exe-

cution of a collective bargaining agreement with a labor union in connection with a state building project when the union practiced discrimination was "state action". Similarly in *Smith v. McQueen*, 316 F. Supp. 899 (M.D. Ala., 1970), the District Court found state action present where a State had exempted a local, racially exclusionary YMCA from all State and local taxes and had entered into contracts with the "Y" for the "Y" to coordinate State sponsored recreational activities.

Finally, in *Seidenberg v. McSorley's Old Ale House*, 317 F. Supp. 593 (S.D. 1970), state action was present by virtue of the fact that the State had licensed a New York bar with a well-known tradition of excluding citizens of the female sex. The refusal of the licensing authority in the context of the latter's pervasive regulatory powers over the former was held to violate the equal protection clause.

In the cases discussed above the various courts were faced with a myriad of factual situations bearing little or no apparent similarity. However, in every case the State involvement went beyond mere refusal of the State governing authority to prohibit the discriminatory activity and the mere refusal of the State to regulate the activity of the individual or organization committing the discriminatory activity. The State in every case had either extensively regulated the area in which the individual or organization was participating or was the moving force behind an activity which substantially benefitted the party which had discriminated. Moreover, although this view was not clearly articulated, the courts in each case regarded the question of whether state action was pres-

ent from the position of how much State activity was involved and not from the position of whether "private" persons were engaged in discriminatory activity.

In the instant case, there is present both an extensive, state regulatory scheme and substantial benefits conferred on club licensees by the State. Under the circumstances it is clear "state action" exists in violation of the equal protection clause by the continued licensing of Appellant, Moose Lodge.

At this point it should be noted what the ramifications of a decision by this Court will be if continued licensing of Moose Lodge No. 107 is held violative of the Fourteenth Amendment. The Moose Lodge and similarly exclusionary clubs, if they do not rectify their exclusionary practices at least for purposes of the sale of liquor, will be no longer permitted club licenses. There may be activities unrelated to the sale of liquor on club premises which such clubs may still be able to conduct on an exclusionary basis. The extent of State involvement in such activities, an involvement not disclosed in this record, will determine, as here, whether such activities are permitted.

Finally, the Commonwealth would like to respectfully indicate its disagreement with an apparent narrowing of the scope of the ruling of the Court below. Circuit Judge Friedman, in the course of an able and well documented opinion, indicated that his opinion implied no judgment "... on private clubs which limit participation to those of a shared religious affiliation or a mutual heritage in national origin." 318 F. Supp. at 1251.

Although the question of the validity of a club license of a religiously or ethnically exclusionary club is not before this Court, it is clear from numerous rulings of this Court that "state action" which discriminates on the basis of religious affiliation or national origin is as equally invidious as racial discrimination. See *Sailer v. Leger*, 403 U.S. 365, at p. 372 (1971); *Oyama v. California*, 332 U.S. 633 (1948); and *Torcaso v. Watkins*, 367 U.S. 488 (1961).

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### CONCLUSION

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For the foregoing reasons, it is respectfully submitted that the judgment of the Court below be affirmed.

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1940-1941

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**Abstract**

20-10-1967

John Deere Co., Moline, Ill.

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**IN THE**  
**Supreme Court of the United States**

**OCTOBER TERM, 1971**

**No. 70-75**

**MOOSE LODGE No. 107, Appellant,**

**v.**

**K. LEROY IRVIS, et als.**

**On Appeal From the United States District Court for the  
Middle District of Pennsylvania**

**REPLY BRIEF OF APPELLANT**  
**MOOSE LODGE NO. 107**

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IN THE  
**Supreme Court of the United States.**

OCTOBER TERM, 1971

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No. 70-75

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MOOSE LODGE NO. 107, *Appellant,*

v.

~~K~~ LEROY IRVIS, *et als.*

---

On Appeal From the United States District Court for the  
Middle District of Pennsylvania

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**REPLY BRIEF OF APPELLANT  
MOOSE LODGE NO. 107**

---

This is a reply brief. We shall not attempt either to repeat or to restate the arguments already fully set forth in our brief in chief (Moose Br.), nor shall we indulge in laborious, point-by-point refutation of what the appellee Irvis has adduced in his 111 pages (Irvis Br.). Rather, we shall endeavor to deal, as summarily as possible, both with the basic errors contained in that document, as well as with the specific

matters therein which seem in most urgent need of correction.

We follow below both the outline and the Roman numeral headings of our brief in chief, although the captions of each heading vary in phraseology from those previously employed.

**II. THERE IS NO CASE OR CONTROVERSY HERE, NOT BECAUSE THE APPELLEE IRVIS HAS FAILED TO ALLEGE AN ASSERTED INJURY, BUT BECAUSE THE RELIEF HE SOUGHT AND OBTAINED, AS WELL AS THE MODIFIED RELIEF THAT HE REFUSED, NEITHER AFFORD HIM REDRESS NOR RENDER IMPOSSIBLE REPETITION OF THE INCIDENT THAT TRIGGERED THIS LITIGATION**

The appellee Irvis says (Irvis Br. 34) that we conclude that he "has suffered no personal injury for which he seeks redress," and that (*id.* 42) he "is an injured party with a direct, personal stake in the judicial resolution of his complaint;" in the intervening 8 pages he argues that he did indeed have standing to sue (*id.* 34-42).

All of this completely misapprehends our position. We never said that he lacked standing to sue, we simply demonstrated (Moose Br. 38-44) that the redress he sought and obtained, as well as the modified relief that he refused, neither afforded him redress nor rendered impossible repetition of the incident of which he complained. Consequently it was clear that he sought simply an abstract declaration, legislative in character and obviously punitive in effect.

That conclusion can be set forth in syllogistic fashion.

1. Irvis complained that, when he requested service of food and beverages, Moose Lodge through its agents



and employees refused him service, solely because of his race (Complt., ¶ 11, A. 6; admitted by Moose Ans., ¶ 6, A. 17).

2. This being the asserted injury, how can it be redressed?—assuming as we must under the present heading that the complaint stated a cause of action.

3. It could be redressed by damages under 42 U.S.C. § 1983 (Moose Br. 5)—but Irvis did not seek damages.

4. It could be redressed by striking out the Caucasians-only clause in the Moose Constitution—but Irvis has consistently conceded in this Court the Moose Lodge's right to bar him from membership (Motion to Affirm 9; Irvis Br. 39).

5. It could be redressed by enjoining the Moose Lodge from refusing him admission when accompanying a Lodge member—but Irvis objected to that modification in the district court (A. 44-47; details at Moose Br. 18-19), and still disclaims any desire for guest privileges now (Irvis Br. 35, 41).

6. What Irvis sought (Complt., Prayer 2, A. 7-9), what he received (Decree, ¶ 3, A. 41-42), and what he insists on here (Irvis Br. *passim*) is a decree that lifts the Moose Lodge's liquor license if that body does not eliminate its racial membership restriction.

It now remains to test what would happen if the decree below were affirmed and Moose Lodge No. 107 adhered to its membership preferences.

Plainly, it would lose its liquor license.

The immediate consequence of that deprivation, one could reasonably suppose, would be that members bent

on conviviality would operate a locker system. Thus they would use their own bottles, no sales of liquor would take place, and the Moose Lodge would supply only set-ups and mixers. This is the traditional and usual *modus vivendi* in other partially dry states, nor does such a locker system violate the Pennsylvania Liquor Code in any way, just so long as club employees are not paid for the service of or the mixing of drinks.

Suppose, then, another member once more introduced Mr. Irvis into the Lodge as a guest, with a view to entertaining him with dinner and with a drink served from that member's locker.

Once again, the Moose Lodge's agents and employees would refuse him service—and probably admission as well, since he is not now eligible to be a guest—and not a single syllable in the decree now under review would in any manner prevent them from doing so.

For Irvis has not only said that he did not wish to enter either as a member or a guest, but he has argued that the building and elevator and restaurant permits and licenses are wholly unlike the liquor license against which he has massed all of his forensic artillery (Irvis Br. 55-56, 62, 64).

Therefore, Moose Lodge is not required by the decree to vacate its building, shut down its elevator, close its dining facilities, or cease operating a locker system. Moose Lodge will have everything it has now, except a liquor license permitting sale by the Lodge to its members; in every other respect, its situation remains unchanged: Moose Lodge No. 107 maintains its premises and its restaurant; it maintains its membership restrictions, with no injury to Irvis, who does not wish

to join; and it maintains its guest restrictions, a status that Irvis rejects.

In short, full compliance with the decree below does not admit Irvis to the Moose Lodge; in that respect matters remain as before—with the single exception that Moose Lodge members cannot buy drinks at a bar but must bring their own bottles to their club lockers.

That is why we say that that decree affords Irvis no redress; that is why we have articulated the contention that the relief Irvis sought and received is essentially punitive, legislative, and abstract in nature: It does not help him, it only inflicts injury on Moose Lodge, as the parties have stipulated (see Moose Br. 18 and Irvis Br. 6, 61-62).

Consequently, since the thrust of Irvis's demands is that the Commonwealth withdraw its liquor license, since that was the precise relief granted, and since that relief would in no sense effectuate either Irvis's membership in the Moose or his entrance into the Moose premises—both of which he emphatically not to say indignantly rejects—it follows, not only that he has no interest whatever in redress for his asserted injury, but that, to the contrary the record plainly shows that "he has merely a general interest common to all members of the public" (*Ex parte Levitt*, 302 U.S. 633, 634).

Hence, inescapably, there is no longer any Case or Controversy.

**III. THE VERY BASIS OF THE FIRST AMENDMENT RIGHT OF PRIVATE ASSOCIATION GUARANTEED BY THE FEDERAL CONSTITUTION IS THE EXPRESSION OF PERSONAL PREFERENCE, AND THAT PREFERENCE NEED NOT BE EITHER RATIONAL OR REASONABLE OR UNIVERSAL IN SCOPE IN ORDER TO BE PROTECTED AGAINST STATE EFFORTS TO PENALIZE ITS EXERCISE**

**A. The First Amendment Right to the Expression of One's Personal Associational Preferences Is Neither Restricted to the Advocacy of Ideas Nor Limited To Preferences That Others Would Approve**

The appellee Irvis's position on the constitutionally protected right of private association invoked by Moose Lodge No. 107 is so grudgingly limited, so uncertain, and ultimately so very contradictory, as to make plain that he either does not understand the scope of that First Amendment right or else is unwilling to give full effect to its breadth.

His discussion commences with this passage (Irvis Br. 92-93):

“ \* \* \* we agree with the basic application of the first of these points as it has been expressed in the two cases cited by Moose Lodge (Brief, pp. 45-46), *Bell v. Maryland*, 378 U. S. 226 at 313 and *Evans v. Newton*, 382 U. S. 296 at 298-99. We agree with this right of private association because this right is encompassed in the constitutionally protected right to freedom of assembly. We agree with it notwithstanding its reflection of an aspect of human nature which debases our national purpose, thwarts full participation of all our citizens in our national life and furthers a sense of inferiority among those excluded.”

A footnote quotes from a work on *The Protestant Establishment—Aristocracy & Caste in America*, to the effect that “the members of minority groups are

keenly sensitive to institutionalized exclusion of members of their own groups regardless of their merits and manners."

Both Irvis's own text as well as the quotation adduced in its support reflect not only misunderstanding but also misstatement.

To begin with, the essence of the First Amendment right of private association is the selection of one's associates—and of course the concomitant of selection is exclusion of those not selected. This is plain from the very excerpts that Irvis purports to approve.

Thus in *Bell v. Maryland*, 378 U.S. 226, 313, three members of the Court said (*italics added*):

"Prejudice and bigotry in any form are regrettable, but *it is the constitutional right of every person to close his home or club to any person or to choose his social intimates and business partners solely on the basis of personal prejudices including race. These and other rights pertaining to privacy and private association are themselves constitutionally protected liberties.*"

Again, in *Evans v. Newton*, 382 U.S. 296, 298, 299, the Court said (*italics added*):

"There are two complementary principles to be reconciled in this case. *One is the right of the individual to pick his own associates so as to express his preferences and dislikes, and to fashion his private life by joining such clubs and groups as he chooses. \* \* \* A private golf club, however, restricted to either Negro or white membership is one expression of freedom of association.*"

Two observations are in order at this point.

First, while of course there are obvious differences between homes and clubs, the foregoing excerpts indi-



cate very clearly that the First Amendment right of private association extends equally to both. In the passage from his brief already quoted (Irvis Br. 92-93; *supra* p. 6) Irvis professes agreement with what is said in *Bell v. Maryland*, 378 U.S. 226, 313, and in *Evans v. Newton*, 382 U.S. 296, 298-299. But later on (Irvis Br. 99) he qualifies that approval by asserting that "The values attendant upon preservation of privacy in the home simply do not apply to the situation involved in an organization like Moose Lodge."

To this it is sufficient to say that the right of associational freedom, which the present case involves, is very obviously broader than Irvis's phrasing, "preservation of privacy." We forego the opportunity to score debating points over the shift in position from unqualified if grudging approval of *Bell v. Maryland* and *Evans v. Newton* that Irvis's present argument necessarily involves.

Second, Irvis again shifts from approval of those decisions when he seeks to transform—and to limit—the right of private association to one that is related to advocacy. He says (Irvis Br. 98):

"Where the right of private association is asserted by members of a group seeking to advance ideas and beliefs flowing from their exercise of the right of free speech and the right of free assembly (e.g., political advocacy), then the protection afforded them through granting primacy to the freedom of private association should be recognized; and possible discriminatory consequences flowing from the granting of this protection should be endured. On the other hand, where the right of private association is asserted in order to advance common social or fraternal interests, it should not be given precedence over racially discriminatory actions taken in furtherance of such common interests."

The short answer to the foregoing is that the First Amendment right of private association has never been so limited in any expressions here, but, on the contrary, has been much more broadly delineated. It will clarify matters if, at the risk of repetition, we quote again from the basic decisions that Irvis purports (Irvis Br. 92-93) to accept:

" \* \* \* it is the constitutional right of every person to close his home or club to any person or to choose his social intimates and business partners solely on the basis of personal prejudices including race." *Bell v. Maryland*, 378 U.S. at 313.

"A private golf club, however, restricted to either Negro or white membership is one expression of freedom of association." *Evans v. Newton*, 382 U.S. at 299.

Consequently the exercise of personal preferences cannot—recurring to Irvis Br. 93—fairly be characterized as involving a debasement of national purpose. For, necessarily, in a pluralistic society such as ours, virtually every association of like-minded persons excludes others. Therefore "full participation of all our citizens in our national life" (*ibid.*) surely cannot mean that the Republic is morally doomed unless everyone can belong to everything.

And to say (*ibid.*) that every club membership restriction of whatever nature "furtheres a sense of inferiority among those excluded," keying that assertion to "the members of minority groups" (*ibid.*, note 22), is to compound misunderstanding with misstatement stemming from unawareness; indeed, it involves repetition of a shopworn stereotype that in many instances simply does not square with the facts.

For one thing, minority groups frequently exclude overwhelmingly large majority groups; for another, "institutionalized exclusion of members \* \* \* regardless of their merits and manners" is consistently directed at members, frequently distinguished members, of what current sociological prattle sneeringly denigrates as The Protestant Establishment or further compartmentalizes as Aristocracy or Caste.

Take the Society of Mayflower Decendants: In order to join that group, the applicant must prove descent from a miniscule body of just 23 male passengers who sailed in the *Mayflower* on the voyage that terminated at Plymouth in December 1620.<sup>1</sup>

No one else can join this organization. This then, is an "institutionalized exclusion," not of minority groups, but of the overwhelming majority of American citizens, "regardless of their merits and manners." But surely it is not an exclusion which, in Irvis's extravagant phrase, "debases our national purpose."

Indeed, many eminent and admirable individuals who would on any footing earn inclusion in "The Protestant Establishment," and whose ancestry on these shores is almost equally long, could not qualify for membership in the Society of Mayflower Descendants. Thus, persons whose forebears landed at Plymouth just a year later, via the *Fortune* in November

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<sup>1</sup> "There were 102 passengers on that voyage, but many left no proven descendants. To preclude argument or misunderstanding as to which of these passengers the General Society [of Mayflower Descendants] recognizes as having proven descendants, it provides on the Application for Membership Form a list of 23 male passengers and prescribes that the lineage on each Application must begin with one of them." *Register of the Society of Mayflower Descendants in the District of Columbia, 1970*, p. 82.

1621. (Bradford, *Of Plymouth Plantation* [Morrison ed., 1952] 90, 92), would be wholly ineligible for membership (barring of course subsequent intermarriage)—and this “regardless of their merits and manners.”

Social exclusion, then, is not a cross borne only by “minority groups.” It is experienced daily by other individuals, even by those whom the devotees of labeling categorize as “aristocracy.”

Thus, when Mr. Ward McAllister selected the guests for Mrs. Astor’s ball on the footing that there were only 400 persons in New York City who counted (11 *Dict. Amer. Biog.* 547-548, *s.v.* Samuel Ward McAllister), a good many gracious and well born couples who rated only, say, between numbers 425 and 475 on the McAllister list, undoubtedly experienced exquisite anguish, not to say torment of soul. But then, the “full participation of all our citizens in our national life” (Irvis Br. 93) that Mr. Irvis so ardently espouses did not require Mrs. Astor to turn her function into a huge “At home” that every inhabitant of the city would be invited to attend. ✓

The constitutional right of private association in home or club—we are of course at pains to exclude places of public accommodation—the First Amendment right of private association in home or club is an expression of personal preferences, and preferences of course need not be either rational or reasonable or even commendable. As Mr. Justice Holmes once said, “Deep-seated preferences can not be argued about—you can not argue a man into liking a glass of beer.” *Natural Law*, 32 *Harv. L. Rev.* 40, 41 (1918).

Indeed, to impose on one man’s preferences the standards of rationality espoused by another man is,

in fact, to deny the first individual's right to entertain any preferences at all. If the only preferences that we are permitted to exercise are those that will pass muster with our neighbors, then we are effectually prevented from having or giving expression to our own.

Finally, and this needs to be reemphasized, the appellee Irvis is on notably unsound ground with his consistent implication that club membership restrictions invariably involve the impact of "The Protestant Establishment" on "minority groups."

The fact is quite otherwise. As the Benevolent and Protective Order of Elks has shown, in its valuable brief *amicus curiae* now pending on motion for leave to file, many, many, "minority groups" belong to private clubs and associations from which they exclude not only members of other minority groups but members of majority groups as well, and this by the same process (Irvis Br. 93 note 22) of "institutionalized exclusion" that Irvis so strongly deplores.

Blacks, American Indians, Orientals—all of them have their own clubs and associations that are restricted to members of their own race, just as white citizens do. All of these groups are exercising their constitutional liberty of private association; all of them, far from frustrating American's national purposes, are enriching the associational values of America's uniquely pluralistic society.

The widespread nature of this manifestation is underscored by the circumstance that, according to the Elks' calculations, private associations with racial restrictions (whether or not combined with other restrictive provisions) have an aggregate membership running into the scores of millions—and the number would



be substantially larger if ethnic restrictions; which of course are inescapably racial also, were included.

To urge, as the appellee Irvis does in support of the judgment below (Irvis Br. 93), that all this "debases our national purpose, thwarts full participation of all our citizens in our national life and furthers a sense of inferiority among those excluded," is—to put it most mildly and charitably—completely, utterly, and demonstrably mistaken.

**B. A Private Association's Benevolent Purposes Are Not Rendered Less So Because Restricted to Members of a Particular Racial Group**

Irvis's brief contains an intimation—perhaps "innuendo" would be a more accurate description—that Moose Lodge's benevolent purposes have somehow taken on a malevolent tinge because restricted to whites. He says (Irvis Br. 4-5):

"These purposes [of the Moose Lodge] encompass a variety of praiseworthy objectives of a fraternal nature, including the objective 'to encourage tolerance of every kind' (A. 22). The accomplishment of these objectives by common action is limited to white persons (A. 22)."

Remarks of similar tenor appear at pp. 81-82.

We content ourselves with the comment that it has not hitherto been ground for impugning the motives of benevolent associations that their benevolence is limited by racial restrictions.

Take the National Association for the Advancement of Colored People: That organization has won notable victories on behalf of black Americans, as the pages of this Court's reports testify. There may well be citizens

throughout the country who still question the desirability of every NAACP success. But surely no one has ever faulted that body because its objectives were limited to the advancement of colored people, and thus did not include the advancement of American Indians, or of Americans of Japanese ancestry, or of Mexican-American people.

Why then should Moose Lodge be looked at askance simply because it limits itself to the advancement of white people?

Benevolence, like charity, begins at home, nor is it in any degree unnatural to restrict to one's own kind the extension of one's bounty.

**C. Exercise of the First Amendment Right of Private Association May Not Be Penalized by a State Through Withdrawal of Licenses or Otherwise**

Irvis then makes two further arguments, which can be considered together.

First, he urges (Irvis Br. 93-97), the individual's constitutional right of private association "does not include a right to compel the State to grant his group a license to sell alcoholic beverages to its members."

The short answer to that contention is an obvious one: Far from being under compulsion to issue such a license, the state has already granted one, on the footing that the Liquor Control Board has no authority to refuse a license to a club that exercises its constitutional right to impose associational restrictions on its membership (Cmplt., ¶ 9, A. 6; admitted, Stip. ¶ B(1), A. 25). What the present litigation involves is, not an effort by Moose Lodge to compel issuance of a club liquor license, but rather only the campaign of

the appellee Irvis—successful up to now—to lift that license.

Second, Irvis argues (Irvis Br. 97-99), even if the constitutional right is deemed to include the right to obtain a liquor license, that right must give way “when balanced against Irvis’ right to be free from State-supported racial discrimination.”

Of course the last clause of the quoted formulation begs one of the vital issues of the case, which is whether issuance of a liquor license does indeed transform the acts of the licensee into those of the governmental licensor (Moose Br., Point IV, pp. 59-86; *infra*, pp. 20-42).

But, assuming that issue in Irvis’s favor for purposes of the discussion under the present heading, such an assumption still does not help him.

That is because once it is conceded, as it must be, that the Moose Lodge may exercise its First Amendment right of private association by excluding Mr. Irvis and other non-Caucasians—and Irvis has repeatedly indicated in this very case and in submissions to this Court that the Moose Lodge does indeed have that right (A. 46, A. 47; Motion to Affirm 2, 9; Irvis Br. 39)—then it necessarily follows on familiar and long-established principles that the Moose Lodge cannot be penalized for exercising that federally granted constitutional right. As applied here, the result is that the Commonwealth of Pennsylvania was right in refusing to withhold a liquor license because of the Moose Lodge’s membership restrictions (Cmplt., ¶ 9, A. 6; Stip., ¶ B (1), A. 25); that the Commonwealth therefore could not constitutionally withdraw such a license because the Moose Lodge enforced its restrictions; and that the

district court erred when it required the Commonwealth to do so (Decree, ¶¶ 2, 3; A. 41-42).

The precedents compelling the foregoing conclusions involve state anti-removal statutes and the doctrine of unconstitutional conditions; inasmuch as this is a question that has not arisen for nearly 60 years, a short exposition may be in order.

The Constitution confers a grant of diversity jurisdiction (Art. III, § 2), and the First Judiciary Act of 1789 provided for the removal to a federal court of an action brought in a state court against a citizen of another state, given the requisite jurisdictional amount (Sec. 12, 1 Stat. at 79). Then, in *Louisville, Cincinnati & Charleston R. R. v. Letson*, 2 How. 497 (1844), it was held, qualifying the earlier decision in *Bank of the United States v. Deveaux*, 5 Cranch 61, that a corporation was a citizen of the state in which it was incorporated; cf. 28 U.S.C. § 1332(c) as amended in 1958 (corporation is also a citizen of the state in which it has its principal place of business).

Thus, from 1844 until 1958, if a sufficient amount was in controversy, every corporation could remove to a federal court actions for which it was sued in the courts of every state other than the one in which it was incorporated.

Meanwhile, in 1839, it was held in *Bank of Augusta v. Earle*, 13 Pet. 519, that a state had the power to exclude foreign corporations from doing business within its borders.

That doctrine, while the right of removal was still very broad, induced some states to enact legislation providing that, when a foreign corporation once admitted to do business within the state undertook to

remove to the federal court any action brought against it in the state court, its permission to do such business would be terminated forthwith.

Such statutes were uniformly held unconstitutional, on the footing that a state could not impose a penalty on the exercise of a right granted by the Constitution of the United States. *Home Ins. Co. of N. Y. v. Morse*, 20 Wall. 445; *Doyle v. Continental Ins. Co.*, 94 U.S. 535; *Harrison v. St. Louis & S. F. R. Co.*, 232 U.S. 318; *Donald v. Philadelphia & R. Coal & I. Co.*, 241 U.S. 329.

So here: Moose Lodge has the right under the First Amendment to limit or restrict its membership as it chooses. Irvis admits that right (A. 46, 47; Motion to Affirm 9; Irvis Br. 39). Irvis moreover stipulated (Stip. ¶ B(3), A. 25, admitting Moose Ans., Fourth & Fifth Affi. Def., A. 19, 20); and indeed several times asserts here (Irvis Br. 6, 61-62), that loss of the Moose Lodge's liquor license would be an injury in fact. Therefore withdrawal of its state liquor license would penalize the Moose Lodge's exercise of its constitutional right, and would do so in violation of the rule that a state may not impose a penalty on a legal entity that does what the Constitution of the United States entitles it to do.

Consequently Irvis is quite wrong in asserting (Irvis Br. 97) that "Given the reason for the right of private association and the scope which has been afforded it by the decisions of the Court, we find no invasion of this right by the withholding or withdrawal of a state-granted liquor license."

It also follows in consequence that the decree below, which, without paying any heed whatever to the well-



settled and indeed unquestioned doctrine of unconstitutional conditions, required the Pennsylvania Liquor Control Board to lift the Moose Lodge's license, is erroneous, and must be reversed.

We think that, on identical reasoning, the Maine statute cited by us (Moose Br. 104), and sought to be cited by the Elks (Elks Br. A. C. 4-5), is similarly invalid. But that is matter for another day.

**D. No Decision Relied on by Irvis Except One Has Ever Considered the Impact of the Liquor-License-Equals-State-Action Theory on the Federally Granted Right of Private Association, and That One Was at Pains To Point Out That the Asserted Right of Freedom from Discrimination Did Not Apply to a Private Club**

We pass for the moment all of Irvis's efforts to transform into state action by reason of possession of a state liquor license every act done by licensee Moose Lodge, and direct our attention to the impact, on the Moose Lodge's federally granted right of private association, of the state-action involvement doctrine put forward by him.

*Burton v. Wilmington Pkg. Auth.*, 365 U.S. 715, Irvis's most frequently cited authority, plainly did not reflect any such impact, and to say that this case involved "a private restaurant's refusal to serve a Negro customer" (Irvis Br. 67) blurs the circumstance that the "private restaurant's" establishment was one that in fact sought public patronage and that it therefore was in no sense a private club—nor did its owner even colorably contend that it was.

We can assert categorically, with complete accuracy, that the only decision squarely raising the conflict even by way of dictum is a single unappealed district court

case. *Seidenberg v. McSorley's Old Ale House, Inc.*, 317 F. Supp. 593 (S.D. N.Y.). This, to our knowledge, is the only litigation other than the present one (see also s.c., 308 F. Supp. 1253) that up to now has espoused Irvis's central liquor-license-equals-state-involvement theory. But even that decision was at pains to differentiate a private club from a place of public accommodation (317 F. Supp. at 604):

"Any one of the male sex who is over 18 and neither drunk nor disorderly may enter and purchase a drink. The success of the business depends, in fact, upon large numbers of individuals doing precisely that, and a continuing invitation is extended to as many males as can, consistent with fire regulations, be served on the premises. *In this significant respect defendant differs from a private men's club, which does not purport, and is not required, to serve the public.*" (Italics added.)

Thus the single decision put forward by Irvis to support his "state involvement" theory is actually authority against him in the present case's context of an admittedly private club.

We point out below, pp. 28-31, substantial infirmities in the *McSorley Ale House* ruling; sufficient for present purposes to show that, by its terms, it is contrary to the opinion below, and rejects Irvis's arguments on the very balancing issue that he tenders: Even on the overly attenuated and indeed utterly artificial notion that possession of a liquor license transforms licensee into licensor, the privacy of a private club still prevails.

And, as we have already shown (Moose Br., Point V, pp. 86-107) and will hereafter additionally demonstrate (*infra*, pp. 42-56), to the extent that a balancing of rights is called for to resolve the situation in the pres-

ent case, Congress has effected that balancing in § 201 (e) of the Civil Rights Act of 1964 by exempting from the duty of serving all comers "a private club or other establishment not in fact open to the public."

On that issue, no decision other than the one now on appeal supports Irvis, and *McSorley*, which he several times invokes (Irvis Br. 29, 41, 74, 86), squarely rejects his position.

**IV. UNDER NO PERMISSIBLE CALCULUS OF CONSTITUTIONAL INTERPRETATION CAN THE ISSUANCE OF A LIQUOR LICENSE TO A PRIVATE CLUB TRANSFORM THAT CLUB'S ACTS INTO STATE ACTION THAT IS SUBJECT TO THE FOURTEENTH AMENDMENT**

We shall not repeat what we have said under the substance of this heading, our original Point IV (Moose Br. 59-86); rather, we concentrate on such of Irvis's present arguments as were not fully anticipated in our brief in chief.

**A. Irvis's Support of the Exemptions Granted by the Court Below to Private Clubs Having Religious and Ethnic Rather Than Racial Membership Restrictions Actually Constitutes a Rejection of the Very "State Involvement" Concept That Is Central to His Case and That He Consistently Espouses Elsewhere in His Argument**

As we have indicated (Moose Br. 77-83), the court below embraced a weird dichotomy that struck at private clubs having racial membership restrictions but wholly approved similar membership restrictions "which limit participation to those of a shared religious affiliation or a mutual heritage in national origin."

Irvis now argues (Irvis Br. 80-84) that this distinction "is a sound one if the limitation is reasonably related to the otherwise valid purposes of the organization."

We have already (*supra*, pp. 6-13) disposed of the notion that personal preferences must, as a prerequisite to their valid exercise, conform to other individuals' notions of rationality and reasonableness.

The additional point to be made here is that Irvis's effort to defend what is clearly the most indefensible portion of the ruling below actually constitutes a rejection of the very "state involvement" concept that is central to his case, and to which he therefore devotes the major portion of his printed argument (Irvis Br. 43-92).

That additional point of ours can also be shown in syllogistic form, by simply setting forth Irvis's contentions as they follow each other in his brief.

1. A state may not discriminate between citizens on a racial basis. XIV Amendment.

2. By granting a liquor license to the Moose Lodge, Pennsylvania has become involved in the racial discrimination practiced by that Lodge. Irvis Br. 43-63.

3. Pennsylvania's involvement is so significant that Moose Lodge's racial discrimination has become state action. Irvis Br. 64-84.

Therefore, 4, the decree below directing revocation of Moose Lodge's liquor license was proper. Irvis Br. 85-92.

Thus the core of Irvis's fundamental position is that, since the state was involved in what Moose Lodge did, it follows inevitably that the admitted racial discrimination practiced by the Moose Lodge became state action prohibited by the Fourteenth Amendment.

But what Irvis completely overlooks in undertaking to support the district court's racial versus religious

or ethnic distinctions is that religious or ethnic discrimination practiced by other clubs would, similarly and inescapably, also become state action under his own core argument—and that the Fourteenth Amendment equally prohibits religious discrimination (*Torcaso v. Watkins*, 367 U.S. 488; *Everson v. Board of Education*, 330 U.S. 1, 16), political discrimination (*Schwartz v. Board of Bar Examiners*, 353 U.S. 232, 238-239), ethnic discrimination (*Hernandez v. Texas*, 347 U.S. 475), or a combination of several or all of them (*United Public Workers v. Mitchell*, 330 U.S. 75, 100; *American Sugar Refining Co. v. Louisiana*, 179 U.S. 89, 92).

What Irvis thus overlooks, and, much more importantly, what the court below failed utterly to recognize (A. 40), is that the Equal Protection Clause simply does not sanction religious or ethnic distinctions directly emanating from a state.

And this is no recent revelation suddenly vouchsafed to the faithful while heretofore totally concealed from those uninitiated or unenlightened. In the case last cited, decided in 1900, this Court sustained a state statute that imposed a license tax on manufacturers engaged in the business of refining sugar, while exempting from the tax those who refined the products of their own plantation. Then the Court went on to say (179 U.S. at 92):

“Of course, if such discrimination were purely arbitrary, oppressive, or capricious, and made to depend upon differences of color, race, nativity, religious opinions, political affiliations, or other considerations having no possible connection with the duties of citizens as taxpayers, such exemption would be pure favoritism, and a denial of the equal



*protection of the laws to the less favored classes."*  
(Italics added.)

Thus, if Moose Lodge No. 107 must lose its liquor license because it limits membership to Caucasians, it is equally vulnerable for requiring of its members belief in a Supreme Being; and, by parity of reasoning, every Knights of Columbus council, whose membership is restricted to Catholics, and every element of the Polish National Alliance and of the Sons of Italy, whose respective exclusions are based on nativity, must similarly, every one of them, give up their present licenses to dispense alcoholic beverages in all their several places of meeting and association.

In this connection, it is interesting to note the position on the present point of the members of the Pennsylvania Liquor Control Board.

Those members, defendants below, moved first to dismiss the complaint and then opposed Irvis's motion for summary judgment (Moose Br. 15). Thereafter they did not appeal, after which they notified the Clerk of this Court that they did not desire to participate further in the litigation (Moose Br. 19). Now, however, following some six additional months of cogitation—except for the happenstance that April through September are not a part of winter in the northern hemisphere, we would be tempted to say, "six additional months of hibernation"—now the Liquor Control Board members completely reverse their position, and return to the lists—on Irvis's side.

Even so, they gag at the district court's racial versus religious or ethnic distinction (A.G. Br. 11-12), and desert Irvis on that issue.

Whether those Board members are in consequence similarly prepared to deprive, for example, every Knights of Columbus council of its liquor license, they do not say. They have ample opportunity to test their own logic, if they so desire, right in the Harrisburg area; the telephone directory there lists the Knights of Columbus, a religiously restrictive private club, and the following private clubs that have ethnic restrictions on membership: German-American Friendship Society, Royal Italian Social Club, Steelton Italian Club.

On the views now espoused by the members of the Liquor Control Board, that (A.G. Br. 11) "it is clear 'state action' exists in violation of the equal protection clause by the continued licensing of Appellant, Moose Lodge," and that (*id.* 12) "it is clear from numerous rulings of this Court that 'state action' which discriminates on the basis of religious affiliation or national origin is as equally invidious as racial discrimination," these other organizations, also, cannot hope for continued licensing.

It may well be doubted whether all of the foregoing consequences have been fully considered by the Board's members. And it might be particularly unkind to suggest that they should be called on for answers before the passing of another six months' period for reflection.

We cannot forbear to remark that, if the issuance of a club liquor license under the Pennsylvania Liquor Control Board's Regulation 113, Clubs (App. F to J.S., pp. 147-149) turns a private club's membership restrictions into state action, then that Board's Regulation 119, Wines (*id.*, pp. 169-171) similarly turns into state action the religious restrictions of the church, syna-

gogue, or temple concerned in the purchase of the sacramental wines to which Regulation 119 is addressed.

We called attention to Regulation 119 at Moose Br. 72; Irvis responds with a silence so complete as to be deafening—and the Attorney General of Pennsylvania does not deign to mention it either.

But, here again, we refrain from debating trivia. Our significant point under the present heading is that, by his espousal of the exemption for religious and ethnic discrimination sanctioned by the court below (A.40), Irvis has effectually undercut—and destroyed—every vestige of doctrinal basis for the judgment now on appeal.

Of course, when we speak of “doctrinal basis,” we mean constitutional doctrine, not sociological hypothesizing.

**B. The Only Decision Other Than the One Now on Appeal That Up To Now Has Adopted the View That Issuance of a Liquor License Transforms the Acts of the Licensee Into Those of the Licensor Rests on Minority Views Here**

Three members of the Court vigorously rejected the state-action concept on which the ruling below rests (*Bell v. Maryland*, 378 U.S. 226, 333):

“It is true that the State and city regulate the restaurants—but not by compelling restaurants to deny service to customers because of their race. License fees are collected, but this licensing has no relationship to race. Under such circumstances, to hold that a State must be held to have participated in prejudicial conduct of its licensees is too big a jump for us to take. Businesses owned by private persons do not become agencies of the State because they are licensed; to hold that they do would be completely to negate all our private ownership concepts and practices.”

No decision here on which Irvis relies, or of which we are aware, has held that a completely private club such as Moose Lodge, which does not operate on state property, which does not hold itself out as conducting any community or public activity, which has never been the recipient of public funds or of public assistance of any kind, which does not pursue the common calling of an innkeeper, and which has never relied upon or even sought to invoke public assistance in the conduct of its affairs, is so far involved with the state or with state instrumentalities as to turn what it does into state action. We have classified the decisions here—and elsewhere—at Moose Br. 60-63; repetition of what there appears would serve no purpose.<sup>2</sup>

Irvis puts a number of purely hypothetical (not to say rhetorical) questions in the course of his argument. E.g., "Suppose, instead of granting Moose Lodge a liquor license, Pennsylvania simply appropriated \$50,000 a year to it?" The answer, which should be sufficient, is that Pennsylvania has made no such appropriation, nor indeed any other grant of funds, and Irvis has so stipulated (Stip., ¶ 5, A. 24).

Recent decisions here emphasize the significance of an actual grant of money in determining whether particular action involves a state government in forbidden action. Thus, in *Lemon v. Kurtzman*, 403 U.S. 602,

<sup>2</sup> At Moose Br. 14-15, 53, 62, and 102, we referred briefly to Moose Lodge's catering activities, under which it imposed no restrictions on any member of the group using its facilities (Stip., ¶ A(6), A. 25).

We deem it appropriate to advise the Court that, on August 9, 1971, Moose Lodge No. 107 formally resolved to discontinue catering operations, and that this step was made known in the Harrisburg papers for August 17, 1971.

state monetary contributions to religiously controlled schools were struck down as violative of the First Amendment, distinguishing *Walz v. Tax Commission*, 397 U.S. 664, which upheld State tax exemptions for religious bodies against the contention that a similar violation was involved. In each instance, stress was laid on the decisive factor of a direct money subsidy. *Walz* at 675, *Lemon* at 621 and 643.

Contrariwise, the furnishing to religious colleges of buildings financed by federal funds was upheld, as not involving excessive entanglements between government and religion, in *Tilton v. Richardson*, 403 U.S. 672, striking down however the provision for reversion of the buildings to full college control after twenty years.

Reading those decisions together, we think it necessarily follows that, where no funds change hands, and where the state's essential concern is simply that "liquor licensees holding 'club' licenses are *bona fide* clubs and not in fact taprooms or bars having the appearance of a club" (A.G. Br. 2; accord, Moose Br. 83-86 and Irvis Br. 89-92), the grant of a state liquor license can no more turn operations thereunder into state action than the at least equally "pervasive" licensing by Pennsylvania under its Solicitation of Charitable Funds Act (of August 9, 1963, P. L. 628, 10 Purdon's Pa. Stat. Annot. §§ 160-1 *et seq.*) of those who solicit money for churches transforms that measure into state support of religion. (Although previously cited by us, Moose Br. 72, neither Irvis nor the members of the Liquor Control Board have seen fit to comment on that Pennsylvania statute.)

The touchstone, we submit, is direct and tangible state aid—which plainly Moose Lodge does not receive



when it is granted a club liquor license. That, we submit, is the rationale of the decisions classified at Moose Br. 60-63 and just summarized above, p. 26. That, we submit, is the rationale of the *Walz*, *Lemon*, and *Tilton* cases (of which the third was deemed by Irvis not to warrant citation, much less discussion).

Once past a direct money subsidy, we submit, all talk of "state action" shades into verbalization and, as in both briefs opposing us here, ultimately becomes purest fiction.

Apart from the decision under review, only a single case supports what we may call the metamorphosis theory, the view that possession of a liquor license transmutes private action into state action, and that is the *McSorley's Old Ale House* litigation, first on motion to dismiss (308 F. Supp. 1253) and then on motion for summary judgment (317 F. Supp. 593).

The first opinion reflects no awareness whatsoever of what three members of this Court said in the passage from *Bell v. Maryland*, 378 U.S. at 333, that is quoted above at p. 25. The second opinion, no doubt misled by the running head in the official report (which simply said "Black, J., dissenting" when in fact Harlan and White, J.J., joined in that dissent), incorrectly read the foregoing excerpt as reflecting the view of only a single justice—"The Supreme Court has never passed upon a licensing theory of state action, although two Justices have expressed conflicting views on the matter" (317 F. Supp. at 598)—and then proceeded to follow the views of the one rather than the views of the three justices, citing *Garner v. Louisiana*, 368 U.S. 157, 184-185; *Lombard v. Louisiana*, 373 U.S. 267, 281-283; and *Reitman v. Mulkey*, 387 U.S. 369, 384-386.

Thus the metamorphosis or transmutation theory rests on a minority view, one that stood outvoted 3-1 in this Court. Yet it is this minority view that underlies the decisions both in *McSorley's Old Ale House* and in the present case below.

Moreover, as applied to liquor licenses, *McSorley* suffers from infirmities over and beyond its lack of authority.

The first of these is the unworkability of the asserted touchstone of "pervasiveness," the label applied to liquor licenses both there and below and now enthusiastically espoused by *Irvis* (*Irvis* Br. 43-79).

*Irvis* several times argues that a building permit is wholly different from a liquor license (*Irvis* Br. 55-56, 62, 64). But if he had troubled to examine an actual building code, such as the one drafted by the Building Officials Conference of America, Inc., which extends to 434 pages and which has been adopted by many communities, including the City of Aurora, Illinois, where one of us resides, he would have seen in the elaborate provisions of that enactment a degree of "pervasiveness" perhaps even more far-reaching than those of the Pennsylvania Liquor Code.

That is one reason why "pervasiveness," which is really not a test at all, is unworkable.

Another reason underlying unworkability has already been adduced (*Moose* Br. 65-77): The regulations applicable to clubs in Pennsylvania are in actual fact minimal, being designed solely to prevent commercial enterprises from masquerading as private clubs in order to sell liquor for more hours every day. See A.G. Br. 2, quoted above at p. 27, *accord*.

Nonetheless, the court below found in the Pennsylvania Liquor Control Board's Regulation 113.09 (p. 148 of Appendix F to J.S.), which requires that "Every club licensee shall adhere to all of the provisions of its Constitution and By-laws," state action that affirmatively directs discrimination (A. 37-38).

Significantly enough, Irvis has advisedly refused to follow the district court in respect of that holding. His Motion to Affirm (p. 8) indicated that he "agrees with appellant that the primary purpose of this particular provision is to insure that private clubs are in fact private," and in his brief he adheres to that position (Irvis Br. 90): "Irvis did not argue that this regulation acts as a direction to a private club to discriminate, and he does not agree with the indication of the court below to this effect."

Yet, with complete inconsistency, Irvis then executes a perfect about-face, and goes on to suggest the inclusion in a decree in his favor of a paragraph that would, in opposition to his own twice-expressed views, enjoin the operation of Regulation 113.09 (Irvis Br. 91-92)!

In our view, changes in position so quickly effected simply underscore the artificiality of the metamorphosis or transmutation theory of state action that infects with fundamental error the entire judgment now being reviewed.

Moreover, as we have already pointed out (Moose Br. 66-73), if the test of what is or what is not state action is made to turn on the "pervasiveness" or otherwise of liquor laws and regulations, then the codes of all the remaining 49 states must be compared with those of Pennsylvania. And, if "pervasiveness" is to be the controlling criterion, then a private club with

membership restrictions can keep its premises and its restaurant (Irvis Br. 55-56, 62, 64), and, depending on the varying liquor codes throughout the nation, shift from sales of liquor to its membership to a locker system under which only ice and mixers will be sold.

All of these matters must be litigated—and the resultant diversities will then be enshrined on the footing that they are required or permitted, as the case may be, by the Constitution of the United States.

The second infirmity in *McSorley* is the notion that, although nothing in § 201(a) Civil Rights Act of 1964 (42 U.S.C. § 2000a (a)) prohibits places of public accommodation from discriminating between customers on the basis of sex (accord, *DeCrow v. Hotel Syracuse Corp.*, 288 F. Supp. 530 (N.D. N.Y.)), such discrimination is forbidden by the Fourteenth Amendment *eo nomine*.

How that conclusion, which indeed was made explicit in both *McSorley* opinions, can square with *Minor v. Happersett*, 21 Wall. 162, which plainly held the Equal Protection Clause unavailing to strike down a claim of obvious discrimination on grounds of sex, or with the fifty-year campaign for the Nineteenth Amendment (e.g., 15 ENCYC. SOCIAL SCIENCES 439, 446-447 (Woman, Position in Society); Carrie Chapman Catt, *Woman Suffrage by Federal Constitutional Amendment* (N.Y. 1917)), is assuredly not explained by anything in either *McSorley* case.

But a more basic infirmity in *McSorley*, and indeed in Irvis's central argument here, is the essential fiction involved in transforming the acts of an individual into those of a state and in the consequent blurring the clearly-written limitations of the Fourteenth Amendment. To that we turn.

**C. The Entire Concept of "Partnership" Between a State and Its Licensees, Which Is the Essential Rationale of the Metamorphosis Theory That Transmutes Action of the Licensee Into Action of the Licensor, Constitutes Not Only a Wholly Fictitious Attenuation of the Very Essence of State Action, But Blurs the Fourteenth Amendment to the Extent of Rewriting It**

In his endeavor to establish state action, Irvis resorts to similes and figures of speech which, when analyzed, demonstrate the essentially fictitious character of the central "state involvement" view adopted by the court below.

It will doubtless be more convenient to consider *seriatim* his assertions and contentions on this subject:

1. "This denial [of the equal protection of the laws] was caused by Moose Lodge *and the Board* acting under color of the Liquor Code of Pennsylvania through the grant (by the Board) and use (by Moose Lodge) of a liquor license in conjunction with Moose Lodge's admitted racially discriminatory policies." Irvis Br. 27-28; italics added.

We can properly ask, without the slightest injection of captiousness, just how the refusal of service of food apart from beverages, an essential factor in the incident asserted in the complaint (¶11, A. 6) and admitted by Moose Lodge (¶6, A. 17), can have had anything in the world to do with Moose Lodge's liquor license, or with the Board's grant, or for that matter with anything in the Liquor Code of the Commonwealth of Pennsylvania.

Perhaps it is unusual in today's climate of loose pleading to look to the terms of a complaint, sufficiently unusual indeed to seem even slightly unfair, but at least doing so helps to separate fact from fiction.



For in his complaint, Irvis never once embraced the metamorphosis theory on which he now rests his arguments. In his complaint, Irvis never for a moment said what now appears in his brief (Irvis Br. 27-28), that "this denial was caused by Moose Lodge *and the Board.*" (Our italics.)

No, in his complaint Irvis simply stated the fact, viz. (¶ 11, A. 6), that "Solely on account of Plaintiff's being a Negro, Defendant Lodge, through its agents and employees, refused service to Plaintiff"—and there is not even a scintilla of evidence in the record to the contrary.

2. "Clearly, even under this 'narrower' view [*Adickes v. Kress & Co.*, 398 U.S. 144; 209-212, *per* Brennan, J.], the act of discrimination practiced by Moose Lodge was done under color of the statute." Irvis Br. 28-29.

We repeat, what had the Liquor Code of Pennsylvania to do with the refusal to serve food to Mr. Irvis?

3. "Irvis has been injured. He has been injured by a conjunction of actions taken *by the Board* and by Moose Lodge, his adversaries here." Irvis Br. 40; italics added.

Here again there is a departure from the complaint, which attributes the refusal of service solely to the Moose Lodge through its agents and employees (¶ 11, A. 6), and the same failure to explain how the refusal to serve food could possibly have emanated from the Board.

4. (a) "In Pennsylvania's alcoholic beverage control system every licensee has a 'partner,' the State, which participates daily in its affairs." Irvis Br. 55.

(b) "In the field of alcoholic beverage control the system produces major and indispensable support for a club licensee's financial and organizational stability and reciprocal financial benefits to the State." Irvis Br. 63.

Surely it cannot be seriously contended that reciprocal benefit between citizens and sovereign constitutes a partnership. For reciprocal benefit underlies the very structure of social organization, ancient as well as modern. In feudal times the vassal gave service to the lord in return for protection; today the citizen pays taxes, still in return for protection. Of course the relationship is reciprocal; in a phrase attributed to Mr. Justice Holmes, "Taxes are the price that I pay for civilization." But this kind of reciprocity obviously does not automatically create a partnership.

Frequently the price paid for civilization is a high one; the normal Federal tax rate on corporate income stands today at 48 per cent. 26 U.S.C. § 11. This is far more than Pennsylvania through its Liquor Board can possibly obtain from Moose Lodge No. 107. Thus on Irvis's view every corporation today is a "partner" of the United States, because the United States gives each corporation "indispensable support" and obtains "reciprocal financial benefits." Certainly, the Internal Revenue Code and its awesome volume of implementing regulations are far more "pervasive" than the state liquor laws here involved.

Our most distinguished judges have warned against the dangers stemming from similar analogies that depart from reality.

"As long as the matter to be considered is debated in artificial terms there is a danger of being led

by a technical definition to apply a certain name, and then to deduce consequences which have no relation to the grounds on which the name was applied." *Guy v. Donald*, 203 U.S. 399, 406, *per Holmes, J.*

"When things are called by the same name it is easy for the mind to slide into an assumption that the verbal identity is accompanied in all its sequences by identity of meaning." *Lowden v. Northwestern National Bank*, 298 U.S. 160, 165, *per Cardozo, J.*

An example of the foregoing kind of verbal elision, one not only striking but actually frightening in its impact, is the blurring of the distinction between first degree murder, a planned killing that involves premeditation and is normally a capital offense, and second degree murder, which is a killing in the sudden heat of passion and hence not deemed deserving of the extreme penalty.

That is a distinction perfectly clear on its face—and yet it can be and has been blurred through the verbal device of shortening the interval of premeditation that marks the difference between the two offenses, so that eventually, through use of the words "instantaneous premeditation," the two become quite identical, with the result that an unplanned killing resulting from heat of anger is transformed into a capital offense. Fortunately (the District of Columbia Circuit, which once actually espoused the blurring technique, later retreated from that aberration. See *Bullock v. United States*, 122 F.2d 213, 213-214 (D.C. Cir.) (footnotes omitted):

"This appeal is from a conviction of murder in the first degree. The trial judge instructed the

jury that, though 'deliberate and premeditated malice' involves turning over in the mind an intention to kill, 'it does not take any appreciable length of time to turn a thought of that kind over in your mind.' In 1931, this court said as much. But in 1937 we approved the opposite rule, that 'some appreciable time must elapse.' We adhere to the latter rule. To speak of premeditation and deliberation which are instantaneous, or which take no appreciable time, is a contradiction in terms. It deprives the statutory requirement of all meaning and destroys the statutory distinction between first and second degree murder."

Of course the conviction in question was reversed.

We think that the same improper verbalism infects the judgment now under review, when the district court lost sight of the Constitutional provision and glossed it so as to rewrite its meaning.

The Fourteenth Amendment provides that "No State shall \* \* \* deny to any person within its jurisdiction the equal protection of the laws."

The verbalized fictions relied on by the court below, which are now expounded in even more fictitious terms in Irvis's brief, rewrite that part of our fundamental law to make it read, "No licensee from any State shall \* \* \* deny to any person within that State's jurisdiction the equal protection of the laws."

We urge the Court to adopt what three of its members said in *Bell v. Maryland*, 378 U.S. at 333:

"Businesses owned by private persons do not become agencies of the State because they are licensed, to hold that they do would be completely to negate all our private ownership concepts and practices."



We urge the Court to reject the metamorphosis theory that underlies the judgment below, and which transforms and transmutes into state action so many purely private actions that are in no realistic sense a reflection of what the state itself has done.

Or, otherwise stated, we urge the Court to reaffirm the language of the Equal Protection Clause as it was written.

**D. The Rise and Fall of the Doctrine That Extended Tax Immunities to Government Instrumentalities Emphasizes Both the Dangers of Artificial Constitutional Interpretations as Well as the Wisdom of Starting Anew from the Constitution Itself**

When members of the bench and bar who are now over 65 years of age were first exposed to the rules of their profession, no constitutional principle was better settled than the reciprocal immunity from taxation by one government of instrumentalities of another government, the basis of which was that neither government should impede or burden the operations of the other. Thus, salaries of federal officers could not be taxed by the states (*Dobbins v. Erie County*, 16 Pet. 435), while, reciprocally, salaries of state officers were not subject to federal taxation (*Collector v. Day*, 11 Wall. 113).

But this immunity, resting on Chief Justice Marshall's famous dictum that "the power to tax involves the power to destroy" (*M'Culloch v. Maryland*, 4 Wheat. 316, 431), was expanded and extended over the years, so that, for example, income derived from federal leases was declared exempt from state taxation (*Gillespie v. Oklahoma*, 257 U.S. 501; *Burnet v. Coronado Oil & Gas Co.*, 285 U.S. 393), income derived from sales of gasoline to federal institutions was similarly



held untaxable by a state (*Panhandle Oil Co. v. Mississippi*, 277 U.S. 218), royalty income from a patent issued by the United States was likewise decided to be beyond the taxing power of a state (*Long v. Rockwood*, 277 U.S. 142), the salary of the general counsel of the Panama Railroad Company, a corporation that was a wholly owned instrumentality of the United States, was also held exempt from state tax (*Rogers v. Graves*, 299 U.S. 401), and, by parity of reasoning, the chief engineer of New York City's Board of Water Supply was adjudged to be under no obligation to pay federal income tax on his municipal salary (*Brush v. Commissioner*, 300 U.S. 352).

The sum-total of these decisions, far from strengthening either federal or state governments, served actually to hinder both, and to render each of them less able to perform its allotted task. Analytically, that result flowed from two decisional techniques, one an artificial exaggeration of the concept of "governmental instrumentality" to the point of fictitiousness, the other a similarly artificial attenuation of what constituted an actual "interference."

It became plain to the Court in the early 1930s, as indeed it had been to some of its members in the 1920s, that the whole immunity doctrine needed to be reappraised and reconsidered, essentially because its extreme and indeed extravagant manifestations could not fairly be said to flow inexorably from what was written in the Constitution.

The first steps at disengagement, understandably enough, involved not reexamination of fundamentals but only a pruning of excrescences, as the immunity doctrine was, by gradual changes, somewhat curtailed.

Thus, copyright royalties were held subject to state taxation in *Fox Film Corp. v. Doyal*, 286 U.S. 123, overruling *Long v. Rockwood*, 277 U.S. 142; income from federal leases was restored to the states' power to tax in *Helvering v. Mountain Producers Corp.*, 303 U.S. 376, overruling *Gillespie v. Oklahoma*, 257 U.S. 501, and *Burnet v. Coronado Oil & Gas Co.*, 285 U.S. 393; and, by distinguishing and limiting over half a dozen cases that on their face looked the other way, there was upheld a state tax on the gross receipts of a federal contractor. *James v. Dravo Contracting Co.*, 302 U.S. 134.

The next case requiring decision involved the imposition of federal income tax on three officers of the Port of New York Authority; this Court held, notwithstanding the earlier declared immunity of the New York City's water supply engineer (*Brush v. Commissioner*, 300 U.S. 352), that these individuals were taxable. *Helvering v. Gerhardt*, 304 U.S. 405. Mr. Justice Black was of opinion (p. 425) "that we should review and re-examine the rule based upon *Collector v. Day*," but the Court was not yet ready for that step—at least not at that Term.

Ten months later, however, the entire immunity concept was rejected, in a case involving state taxation of an employee of the Home Owners' Loan Corporation, *Graves v. O'Keefe*, 306 U.S. 466, and the whole concept of reciprocally tax exempt salaries of state and federal employees was disapproved, some old cases being overruled expressly, some by necessary implication; not a single one ever came to life again. This drastic step was taken because, on open-minded reconsideration of the entire immunity problem, the original assumption, that to tax an employee meant a burden on the em-

ployer, simply did not square with reality, and so was rejected by this Court.

Thus Mr. Justice Black's approach in *Helvering v. Gerhardt*, 304 U.S. 405, 424-427, was vindicated.

And Mr. Justice Frankfurter made this observation, one that is particularly significant in the present context; he said (306 U.S. at 491-492, footnote omitted):

"The judicial history of this doctrine of immunity is a striking illustration of an occasional tendency to encrust unwarranted interpretations upon the Constitution and thereafter to consider merely what has been judicially said about the Constitution, rather than to be primarily controlled by a fair conception of the Constitution. Judicial exegesis is unavoidable with reference to an organic act like our Constitution, drawn in many particulars with purposed vagueness so as to leave room for the unfolding future. But the ultimate touchstone of constitutionality is the Constitution itself and not what we have said about it."

Therefore, since "the ultimate touchstone of constitutionality is the Constitution itself and not what we have said about it," it seems appropriate that, on full reconsideration of the realities, this Court should now abandon resort to similes and verbalism, and, eschewing fictions that distort, return to the clear and explicit words of the Fourteenth Amendment:

"No State shall \* \* \* deny to any person within its jurisdiction the equal protection of the laws."

Not "No club," not "No group of private individuals," not "No State licensee," nor even "No State licensee that is pervasively regulated"; the Constitution says—"No State."

We urge, therefore, that the Court return to the language of the Constitution, by declaring that the prohibition of the Equal Protection Clause, which is aimed solely at a state, should not be blurred and hence rewritten by being made to reach the licensee of a state, regardless of the pervasiveness or otherwise of the state's licensing process.

Significantly, such a result would not involve, as indeed it did in the course of the rise and fall of the immunity doctrine, the overruling of a single decision. No earlier decision here needs to be overruled in such reaffirmation of the Constitution; all that is necessary at this point is to refuse further to extend the attenuation of the state action at which alone the Constitution is directed. For the Court has never undertaken to decide the licensing issue, on which, as we have shown, those of its members who have expressed themselves have been aligned 3 to 1 in our favor, in support of the proposition that one who is licensed by a state does not simply by reason of such licensing become either the agent or an agency of that state.

In the Constitutional Convention, John Dickinson of Delaware declared that "Experience must be our only guide. Reason may mislead us." 2 Farrand, *Records of the Federal Convention* (1911) 278.

Decades of experience with the immunity doctrine finally taught us that the salary paid a municipal waterworks engineer does not constitute such a manifestation of state action that it should be exempted from federal taxation. We should therefore be at pains lest the processes of reasoning through means of verbal symbols lead us to conclude that the membership restrictions of a purely private club to which has been issued a liquor license thereby become such a manifes-



tation of state action as to impair the full exercise of the club members' federal constitutional right of private association.

**V. CONGRESS HAS MARKED A REASONABLE AND DEFENSIBLE BOUNDARY BETWEEN APPARENTLY COMPETING CONSTITUTIONALLY PROTECTED LIBERTIES THAT SHOULD BE RESPECTED AND NOT TRIVIALIZED.**

Faced with the terms of Section 201(e) of the Civil Rights Act of 1964, which plainly protect the truly private club, Irvis resorts first to trivialization, then to minimization, and finally to unsupported—and inconsistent—hyperbole.

**A. Irvis's Construction of Section 201(e) of the Civil Rights Act of 1964 Trivializes That Enactment**

Irvis agrees (Irvis Br. 104) that "Moose Lodge has accurately reported (Brief, pp. 89-97) the extent of the [Senatorial] discussion on private clubs." But he concludes (Irvis Br. 111) that "Section 201(e) is simply an expression of a legislative decision that private clubs (like unmentioned private homes) were not to be considered places of public accommodation."

This conclusion imputes to Congress the doing of a perfectly nugatory act, as the language of § 201(e) plainly shows. That subsection makes Title II inapplicable to "a private club or other establishment not in fact open to the public."

Thus Irvis's argument comes to this, that when Congress speaks of "a private club or other establishment not in fact open to the public," it is simply deciding that "private clubs \* \* \* were not to be considered places of public accommodation." Or, perhaps even more clearly expressed, places "not in fact open to the



public" are "not to be considered places of public accommodation."

Irvis's argument, therefore, is that Congress did not enact more than the truism that a place not in fact open to the public is not a place of public accommodation.

Gertrude Stein may well have applauded such an embrace of her "a rose is a rose is a rose" technique of literary expression. But the obvious trivialization involved in Irvis's suggested construction can hardly pass muster as a serious effort at either statutory or constitutional interpretation.

**B. Every Congressional Enactment Is an Interpretation of the Constitution by the Legislature Regardless Whether It Is Specifically Labeled as Such**

Much of Irvis's argument on the private club exemption is devoted to the proposition that Congress did not purport to draw a line, that Congress was establishing legislative policy rather than constitutional authority (Irvis Br. 100, 101, 104, 105, 106, 107, 110).

That contention is inaccurate in several respects.

1. First, several members of the House Judiciary Committee did indeed indicate that constitutional limitations had been considered (H.R. Rep. 914, 88th Cong., 1st sess., Part 2, p. 9):

"\* \* \* where freedom of association might logically come into play as in cases of private organizations, title II quite properly exempts bona fide private clubs and other establishments."

2. Second, by enacting Section 201(e), Congress responded to the invitation earlier extended by some

members of this Court in *Bell v. Maryland*, 378 U.S. 226, 317:

"In the give-and-take of the legislative process, Congress can fashion a law drawing the guidelines necessary and appropriate to facilitate practical administration and to distinguish between genuinely public and private accommodations."

We do not understand that Congress was required to include that citation in Section 201(e) or to drop a footnote in order to signalize that its enactment constituted acceptance of the judicial invitation previously tendered.

3. Finally, there is not a line throughout the very extensive discussions in either House of Congress, in committee or on the floor—at least none of which we are aware or which has been adduced against us—that suggests even in passing that any Senator or Representative ever seriously considered that Congress had the power to control the membership or conduct of truly private clubs but refrained from doing so on mere considerations of expediency.

4. Far more significant, however, is the overriding principle that, whenever Congress passes any act, it is to that extent construing the Constitution in the exercise of the legislative power granted it by that instrument, and that no label need be attached to any legislation as a prerequisite to having such legislation reflect constitutional construction.

Mr. Justice Holmes, sitting on circuit, long ago pointed out the wrongheadedness of imposing any such requirement. He said (*Johnson v. United States*, 163 Fed. 30, 32 [C.A. 1, 1908]):

"The major premise of the conclusion expressed in a statute, the change of policy that induces the

enactment, may not be set out in terms, but it is not an adequate discharge of duty for courts to say: We see what you are driving at, but you have not said it, and therefore we shall go on as before."

That passage has on numerous occasions been quoted with approval by this Court. *Federal Trade Comm. v. Jantzen, Inc.*, 386 U.S. 228, 235; *Minnesota Mining v. New Jersey Wood Co.*, 381 U.S. 311, 321; *Vermilya-Brown Co. v. Connell*, 335 U.S. 377, 388; *United States v. Hutcheson*, 312 U.S. 219, 235; *Keifer & Keifer v. Reconstruction Finance Corp.*, 306 U.S. 381, 391.

Another example of the same approach is *United States v. Florida*, 363 U.S. 121, which gave effect to Florida's claim to a three-league belt of land seaward from its coastline, as described in Florida's 1868 Constitution, because that instrument was approved by Congress when Florida was readmitted to congressional representation after the Civil War.

Seven members of the Court participated in the decision, six members finding a ratification by the Congress of every portion of Florida's 1868 Constitution (363 U.S. at 125-127), the seventh member dissenting because unable to discern in Florida's readmission any Congressional purpose to fix that state's boundaries (363 U.S. at 132-142).

However, four of the six Justices who concurred in the majority opinion—a majority of the Court considering the case—put their concurrence on a broader ground.

Mr. Justice Frankfurter, for himself, and Brennan, Whittaker, and Stewart, JJ., pointed out first (363 U.S. at 131) that "Insofar as the perplexing and re-

calcitrant problems of Reconstruction involved legal solutions, the evolution of constitutional doctrine was an indispensable element in the process of healing the wounds of the sanguinary conflict."

Therefore, he said for himself and his three colleagues (363 U.S. at 132), "in these matters we are dealing with great acts of State, not with fine writing in an insurance policy."

Consequently (*ibid.*):

"Florida was directed to submit a new constitution for congressional approval as a prerequisite for the exercise of her full rights in the Union of States and the resumption of her responsibilities. In this context it would attribute deceptive subtlety to the Congresses of 1867-1868 to hold that it is necessary to find a formal, explicit statement by them, whether in statutory text or history, that the boundary claim, as submitted in Florida's new constitution, was duly considered and sanctioned, in order to find 'approval' of that claim."

In our view, the enactment of the Civil Rights Act of 1964 was a further "element in the process of healing the wounds of the sanguinary conflict" of 1861-1865. Consequently that enactment, also, should be treated as a great act of State; and, thus treated, the conclusion necessarily follows that, in legislating on the subject of public accommodations, Congress by exempting truly private clubs necessarily proceeded on the footing that it lacked power to reach the latter.

Irvis's contrary suggestion, to the effect that Congress indeed had the power to reach farther but advisedly chose not to do so, was not only not given expression by any member of the Congress that enacted the Civil Rights Act of 1964, it is a notion easily shown to be entirely untenable on its own.

**C. Irvis's Belated Invocation of the Thirteenth Amendment Is Contradicted and Completely Neutralized by What He Has Elsewhere Told This Court**

Nowhere in his complaint (A. 3-9) did Irvis invoke the Thirteenth Amendment, and his failure to adduce that provision in the district court is reflected by its non-appearance anywhere in the opinion below (A. 30-40).

Now, however, Irvis makes an all-out appeal, not to the Fourteenth Amendment, on which alone he rested his case below, and on which he fashions his major argument in this Court (Point II, Irvis Br. 43-84), but on the Thirteenth. He now says (Irvis Br. 109):

"We have no hesitancy in declaring that the invidious racial discrimination practiced by private clubs is a 'badge and incident' of slavery. It is demeaning to our Negro citizens and represents a contemporary prolongation of the pre-Thirteenth Amendment white attitude toward the Negro. We also believe that the intent and scope of this Amendment is such that it must be given overriding significance when it conflicts with other constitutional guarantees. Even allowing, however, for possible balancing when First Amendment rights of free speech and free assembly are involved, we find nothing in this case, where the purposes of the private club are fraternal, to warrant giving the Thirteenth Amendment any narrower effect."

We recognize—indeed it is hornbook law—that a litigant is entitled to rely on any ground, whether or not made below, whether or not rejected below, to support a judgment in his favor. E.g., *Dandridge v. Williams*, 397 U.S. 471, 475; *Morley Construction Co. v. Maryland Casualty Co.*, 300 U.S. 185; *United States v. American Ry. Exp. Co.*, 265 U.S. 425.



Therefore, even a revelation belatedly vouchsafed may be put forward on appeal to salvage what was won below; *tabula in naufragio* is a doctrine available to appellees and respondents quite as much as to equitable suitors in courts of first instance.

But Irvis's Thirteenth Amendment contentions are not so much additional to his other contentions, they suffer from the more essential infirmity that they are wholly inconsistent with what he has repeatedly adduced in this very case, not only in the court below, but also in this Court in his Motion to Affirm and indeed in this Court in the very brief now in question.

1. Opposing Moose Lodge's motion to amend the decree below, so as to entitle him to guest privileges, Irvis said:

"The members of Defendant Moose Lodge are free to associate with whom they please." (A. 46).

"Nothing in Plaintiff's Complaint, nothing in Plaintiff's argument, nothing in the Court's Opinion, nothing in the Court's Decree seeks to prevent Defendant Moose Lodge from engaging in any racially discriminatory activities *or to say that such activities are illegal.*" (A. 47; italics added)

2. In his Motion to Affirm, Irvis adhered to that position:

"While agreeing that appellant was otherwise a purely private organization and *free to engage in such discrimination if it so desired*, Irvis contended appellant could not simultaneously enjoy the privilege of holding and using to its benefit a Pennsylvania club liquor license." (M/A 2; italics added.)

"Irvis has not sought to limit the right of association of anyone. *If individuals, as individuals or*

*in groups, wish to exclude him from their private associations because he is a Negro, he recognizes their right to do so.*" (M/A 9; italics added.)

3. In his present brief, Irvis says:

"Clearly, the injury suffered by Irvis was not just that a private organization barred him because he was black. *This, it was entitled to do.*" (Irvis Br. 39; italics added.)

Now, however, just 70 pages later (Irvis Br. 109), Irvis says he has "no hesitancy in declaring that the invidious racial discrimination practiced by private clubs is a 'badge and incident' of slavery."

It seems appropriate, in the face of this final quotation, to recall what Mr. Justice Cardozo said in *Jones v. Securities & Exch. Comm.*, 298 U.S. 1, 29, 33:

"Historians may find hyperbole in the sanguinary simile."

Sufficient now however to remark that Irvis's present Thirteenth Amendment argument is so extreme, so late in surfacing, and so completely at variance with his earlier position—not only in the court below, not only in his Motion to Affirm filed here just six months ago, but also in an earlier portion of his present brief—that its insubstantiality has become virtually self-established.

But it may not be amiss to test Irvis's belated suggestion that the Thirteenth Amendment strikes down racial restrictions in purely private organizations—because, after all, such restrictions cut both ways.

Thus, the Knights of Peter Claver (Elks Br. A.C. 12) have a membership restricted to male, black, Roman Catholics, precluding admission of white males

who profess Roman Catholicism. Is such exclusion a badge and incident of slavery? Or is it really Irvis's position that while the exclusion of blacks from a whites-only private club violates both the Thirteenth and Fourteenth Amendments, similar exclusion of whites from a blacks-only private association violates neither? And if that is indeed his position, how can he square it with his continuous invocation of Equal Protection of the Laws—or with this Court's statement in *Evans v. Newton*, 382 U.S. 296, 299, that "A private golf club, however, restricted to either Negro or white membership is one expression of freedom of association"?

Another example, also, will serve to emphasize the infirmities of Irvis's afterthought contentions.

Membership in B'nai B'rith (Elks Br. A.C. 31) is restricted to Jewish men, women, and youth. Non-Jews of every denomination (whether Christians, Moslems, Confucians, or Buddhists) and of every race (whether white, black, brown, yellow, or red), are impartially excluded. Again, is such exclusion a badge or incident of slavery? This particular example is not at all far-fetched, since by the common law of Angevin England all Jews were subject to a relative servility similar to villeinage; they and all they possessed belonged to the King. 1 Pollock & Maitland, *History of English Law* (2d ed. 1898) 408-475; *Select Pleas, Starrs, &c., of the Exchequer of the Jews* (Selden Society vol. 15, 1901), *passim*.

We submit that inquiries such as those just put go far to demonstrate the inutility of invoking similes so vastly inflated and exaggerated that they shade into fighting words. For to speak of membership restrictions imposed by private clubs as badges and incidents

of chattel slavery is to arouse emotions that can, unfortunately but inevitably, distort reason.

The central issue in the present case concerns the scope of the First Amendment right of private association, and the respect to be accorded the statutory delineation of that right which the Congress has fashioned.

The parties are at issue whether that right is qualified—or even reached—by the Fourteenth Amendment.

But on no rational view can this case possibly be said to be concerned with anything in the Thirteenth Amendment, since membership restrictions in private clubs, restrictions that cut across every community grouping and that exclude majorities as well as minorities, plainly have nothing whatsoever to do with human servitude or with the badges or the incidents of that long since abolished status.

In so concluding, we neither overlook the circumstance that the Thirteenth Amendment, unlike the Fourteenth, is not limited to State action, nor are we unaware of *Griffin v. Breckenridge*, 403 U.S. 88, decided last June.

That decision involved a complaint, the vital part of which was the defendants' interference, by blocking the highway and by beatings, with the plaintiffs' rights, *inter alia*, to freedom of association. 403 U.S. at 90 and 103. And the holding was couched (p. 105) in terms of "racially discriminatory private action aimed at depriving them of the basic rights that the law secures to all free men."

We may admit the basic quality of "the right of the individual to pick his own associates so as to express his preferences and dislikes, and to fashion his private



life by joining such clubs and groups as he chooses," (*Evans v. Newton*, 382 U.S. 296, 298). But that basic right has as its inherent concomitant the right to exclude others from one's private fellowship. Indeed, the next sentence but one of the same opinion (p. 299) goes on to say that "A private golf club, however, restricted to either Negro or white membership is one expression of freedom of association."

Consequently, when the Knights of Columbus restricts its membership to those professing the Roman Catholic faith, non-Catholics are not being deprived of any basic right; the same follows as to non-Jews denied entry into B'nai B'rith, or as to the progeny of those who founded Massachusetts Bay or Maryland excluded from the Society of Mayflower Descendants, or as to the whites or American Indians ineligible for the Knights of Peter Claver—or as to non-Caucasians or atheists refused admission to the Loyal Order of Moose.

That is why we say that the Thirteenth Amendment has nothing to do with this case—although *Griffin v. Breckenridge*, 403 U.S. 88, does indeed attest to the respect properly accorded by this Court to Congressional implementation of the post-Civil War Amendments.

**D. The Reasonableness of the Congressional Exemption for Private Clubs Is Solidly Attested by the Widespread Existence of Such Clubs and Organizations, Whose Aggregate Membership Includes Scores of Millions of Americans**

The first case in which this Court sustained the public accommodations title of the Civil Rights Act of 1964 makes it clear that Congressional legislation need not be buttressed by findings of fact (e.g., *Perez v. United States*, 402 U.S. 146) as a prerequisite to its



validity. *Atlanta Motel v. United States*, 379 U.S. 241, 252-253. Indeed, even in the absence of such aids, the existence of facts supporting the legislative judgment is presumed, *United States v. Carolene Products Co.*, 304 U.S. 144, 152; and that such facts may be adduced outside of the narrow court record has been unquestioned ever since Mr. Louis D. Brandeis (as he then was) undertook to do just that in the celebrated case of *Muller v. Oregon*, 208 U.S. 412, 419, decided in 1908.

In the present case, we need not rely on presumption, because here the factual underpinning on which the Congressional exemption rests is the circumstance that, as the brief *amicus curiae* sought to be filed by the Elks shows, over 56 million persons—56,555,000 people—belong to organizations that have either racial, religious, ethnic, or sex restrictions on their membership. Elks Br. A.C. 69.

This calculation does not include golf or country or athletic clubs, nor does it include Greek letter fraternities or sororities; if the latter categories were added, then nearly 73,000,000 Americans in fact belong to purely private organizations having membership restrictions of some kind. *Ibid.*

Irvis's objection to the filing of this extremely informative document rests on two thoroughgoing misconceptions, both of which have already been exposed above. He says (Objection to Motion of Elks, p. 2) that—

“the extensive listing of organizations in the proposed brief of the Elks is unaccompanied by any statements of organizational purposes, thus making the list totally unhelpful in considering the present case.”

Such cavalier dismissal of highly significant factual information simply reflects—and further emphasizes—some basic fallacies inherent in Irvis's position.

The first of these is his view (Irvis Br. 4-5, 80-81) that club membership provisions must be rationally connected to membership purposes. The all-permeating error here is the idea that social gatherings must be either rational or reasonable, that the personal preferences of one group of individuals must as a prerequisite to their valid exercise satisfy the counterpreferences of some other group. We have already exposed at length this wholly mistaken notion (*supra*, pp. 6-13).

The second basic fallacy is found in Irvis's support (Irvis Br. 80-84) of the fantastic line drawn by the district court between racial restrictions in club membership, which it held unconstitutional, and religious and ethnic restrictions in club membership, to which it gave its blessing (A. 40).

Irvis, who seeks in asserted rationality a rationalization of that preposterous duality, completely overlooks the circumstance that the very transmutation theory that turns the liquor-license-holding-private-club's racial restrictions into state action forbidden by the Fourteenth Amendment would necessarily apply in full measure to religious and to ethnic distinctions. For, when discriminations of the latter variety are indeed the result of true state action, they also encounter the constitutional ban: The Equal Protection Clause tolerates neither religious discrimination (*Torcaso v. Watkins*, 367 U.S. 488; *Everson v. Board of Education*, 330 U.S. 1, 16), nor ethnic discrimination (*Hernandez v. Texas*, 347 U.S. 475), nor the two in combi-

nation (*United Public Workers v. Mitchell*, 330 U.S. 75, 100; *American Sugar Refining Co. v. Louisiana*, 179 U.S. 89, 92).

Thus Irvis's substantive objection to the data gathered by the Elks is wholly untenable.

What the Elks' figures show, what indeed they dramatically demonstrate, is the pervasiveness of the pluralistic factor in American life.

Can it fairly be supposed that Congress could be unaware of that factor? Of course not. It is therefore far more reasonable to conclude that, being fully aware of it, being at least familiar with the doctrine that the power to express and to enforce one's preferences in homes and clubs is itself an exercise of the constitutional First Amendment right of private association, being also not unaware of the invitation extended by some members of this Court to "fashion a law drawing the guidelines necessary and appropriate to facilitate practical administration and to distinguish between genuinely public and private accommodations" (*Bell v. Maryland*, 378 U.S. at 317), Congress did indeed draw a line, one which effectuated that distinction, and which in the process protected the private club activities of nearly 80,000,000 American of both sexes, of all ages, creeds, and races, and of every ethnic strain as well.

On any other supposition none of those millions of citizens could constitutionally gather together in their several groupings and still enjoy the benefit of grape or grain, fermented, brewed, or distilled, as the case might be. Yet if the decision below is affirmed, it must necessarily follow that the associational freedom of all those scores of millions of individuals stands to be to that extent impaired.

Denied a liquor license, every one of the restrictive membership groups would suffer, just as it is stipulated here that Moose Lodge No. 107 will suffer (Moose Br. 57); it is after all common knowledge that profits from the bar make possible virtually every private club's continued existence. "All others can see and understand this. How can we properly shut our minds to it?" *Child Labor Tax Case*, 259 U.S. 20, 37.

We conclude, therefore, that Congress drew the line where it did in order to insure the continued, unhampered, and unpenalized existence of every "private club or other establishment not in fact open to the public." There would really be no other reason for thus framing and enacting Section 201(e) of the Civil Rights Act of 1964.

### CONCLUSION

For the foregoing additional reasons, the judgment below must be reversed.

Respectfully submitted.

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OCTOBER 1971.





IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1971

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No. 70-75

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MOOSE LODGE No. 107, *Appellant*,

v.

K. LEROY IRVIS, *et als.*

---

On Appeal From the United States District Court for the  
Middle District of Pennsylvania

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**SUPPLEMENTAL BRIEF OF APPELLANT  
MOOSE LODGE NO. 107**

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Pursuant to Rule 41(5), appellant Moose Lodge No. 107 files this Supplemental Brief to bring new matter to the attention of the Court.

*First.* At p. 11 of our brief in chief, in the bracketed footnote paragraph at the bottom of the page, we noted that there had been argued in the Pennsylvania Superior Court on March 8, 1971, the appellee Irvis's appeal from the decision of the Court of Common Pleas of Dauphin County holding that the dining room of Moose Lodge No. 107 was not a "place of public accommodation" within the meaning of the Pennsylvania Human Relations Act of February 28, 1961, 43 Purdon's Pa. Stat. Annot. §§ 951 *et seq.*

That appeal has now been decided. On December 13, 1971, the Superior Court of Pennsylvania filed the

following *Per Curiam*: "Order affirmed, on the opinion of Judge Lipsitt"—of the Court of Common Pleas, reported in the Dauphin County Reports at 92 Dauph. 234.

Three of the seven justices of the Superior Court dissented, essentially on the ground that, since guests who were not Moose members were admitted to the Lodge's dining room, the latter became a "place of public accommodation."

We have lodged with the Clerk a certified copy of the *Per Curiam* and the dissent.

Under Section 204(a) of the Pennsylvania Appellate Court Jurisdiction Act of July 31, 1971, the decision of the Pennsylvania Superior Court "may be reviewed by the Supreme Court upon allowance of appeal by any two justices of the Supreme Court upon petition of any party to the matter."

A petition for the allowance of such an appeal was timely filed on January 7, 1972, but had not been acted on at the time this Supplemental Brief went to press.

*Second.* A pertinent provision of the Civil Rights Act of 1964, heretofore overlooked by all the parties, should be called to the attention of this Court.

Section 504 of that Act amended Section 104 of the earlier Civil Rights Act of 1957 by adding, *inter alia*, this paragraph relating to the duties of the Civil Rights Commission (78 Stat. at 251; 42 U.S.C. § 1975c(a)):

"(6) Nothing in this or any other Act shall be construed as authorizing the Commission, its Advisory Committees, or any person under its supervision or control to inquire into or investigate any membership practices or internal operations of

any fraternal organization, any college or university fraternity or sorority, any private club or any religious organization."

The legislative history shows that the quoted paragraph was not part of the bill that became the Civil Rights Act of 1964 either when that measure was introduced or when it was reported to the House (H.R. Rep. 914, 88th Cong., 1st sess., pp. 7-8); the provision in question was offered as an amendment on the floor. There it was redrawn in the course of debate, and accepted by Chairman Celler of the House Judiciary Committee, in charge of the bill, 110 Cong. Rec. 2291-2296. There were no further textual changes in the course of the legislative process; no amendments to the quoted subparagraph were made or even offered in the course of the Senate debate; and it was enacted into law precisely as it was agreed to on the House floor.

Respectfully submitted,

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JANUARY 1972.



**FILE COPY**

Supreme Court,

**FILED**

**FEB 19 1971**

**E. ROBERT**

IN THE

**Supreme Court of the United States**

**October Term, 1971.**

**No. 70-75.**

**MOOSE LODGE NO. 107,**

*Appellant,*

*v.*

**K. LEROY IRVIS, et al.**

**On Appeal From the United States District Court for the  
Middle District of Pennsylvania.**

**SUPPLEMENTAL BRIEF OF APPELLEE,  
K. LEROY IRVIS.**

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K. Leroy Irvis.**



IN THE  
Supreme Court of the United States

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OCTOBER TERM, 1971.

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No. 70-75.

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MOOSE LODGE NO. 107,

*Appellant,*

*v.*

K. LEROY IRVIS, ET AL.

---

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA.

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**SUPPLEMENTAL BRIEF OF APPELLEE,  
K. LEROY IRVIS.**

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Appellee, K. Leroy Irvis, files this supplemental brief, pursuant to Rule 41(5), to present to the Court late authorities not available in time to have been included in his brief in chief.

1. In *Pitts v. Wisconsin Department of Revenue*, 333 F. Supp. 662 (E. D. Wis. 1971), a three-judge district court considered a challenge to Wisconsin state statutes which granted exemptions from property and income taxes to various organizations. The complainants alleged that these statutes violated the Fourteenth Amendment insofar as they extended exemptions to organizations which discriminated in membership on racial grounds.

The District Court concluded that the complainants were entitled to injunctive relief, forbidding the grant of tax exemption to such organizations. It determined that a proper cause of action had been alleged under 28 U. S. C. § 1343 and 42 U. S. C. § 1983, that an actual case or controversy presenting a justiciable issue existed and that complainants' rights under the Fourteenth Amendment had been violated by the State's grant of tax exemptions.

2. Even more significant is *McGlotten v. Connally*, decided by a three-judge district court for the District of Columbia on January 11, 1972 (Civil Action No. 3377-70). McGlotten, a Negro, sought to enjoin the Secretary of the Treasury from granting tax benefits under the Internal Revenue Code to fraternal and nonprofit organizations which discriminated against nonwhites. The Court's opinion provides virtually a mirror image of the present case.

First, the Court found that the case was properly brought before a three-judge court because McGlotten, like Irvis, had made a substantial attack on the constitutionality of a statute even though McGlotten, unlike Irvis, also had alleged unauthorized administrative action under the statute. The Court found both *Zemel v. Rusk*, 381 U. S. 1, and *Flast v. Cohen*, 392 U. S. 83, dispositive of the issue.

Second, rejecting the Government's claim that McGlotten lacked standing, the Court held that a black American has standing to challenge a system of governmental support and encouragement of segregation through a network of tax benefits. As Irvis has asserted in his brief in chief (pp. 34-43), he should be afforded a similar right to challenge a system of governmental support and encouragement of segregation through a network of licensing which produces economic benefits to the discriminating organization.

Third, on the merits the Court concluded that various provisions of the Internal Revenue Code involve the Federal Government in forbidden "state action" in support of racial discrimination. Sections 170(c)(4), 642(c), 2055, 2106(a) and 2522 authorize deductions for contributions to discriminating fraternal orders. Each of these provisions involve the Government in various ways in the affairs of the organization and thus violate Constitutional prohibitions.

Sections 501(c)(7) and 501(c)(8) grant exemptions from income tax to nonprofit clubs and to fraternal orders respectively. The Court found no invalidity in § 501(c)(7) because its reach extended only to the elimination from tax of the income received by nonprofit clubs from its members and, therefore, constituted not a special monetary benefit but rather a policy decision not to tax funds passed by a member to his club. Section 501(c)(8), however, allows a fraternal order to be free from tax also on its investment income; and this, held the Court, was a government-provided benefit in support of discrimination. Like Pennsylvania's grant of a liquor license to discriminating private clubs, the Federal Government thus involved itself in a forbidden way with private racial discrimination.

The *McGlotten* opinion reaches the heart of the issue.

"The minds and hearts of men may be beyond the purview of this or any other court; perhaps those who cling to infantile and ultimately self-destructive notions of their racial superiority cannot be forced to maturity. But the Fifth and Fourteenth Amendments do require that such individuals not be given solace in their delusions by the Government."

Respectfully submitted,

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*K. Leroy Irvis.*

February, 1972.







NOTE: Where it is deemed desirable, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U.S. 321, 337.

# SUPREME COURT OF THE UNITED STATES

## Syllabus

### MOUSE LODGE NO. 107 v. IRVIS, ET AL.

#### APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

No. 70-75. Argued February 28, 1972—Decided June 12, 1972

Appellee Irvis, a Negro guest of a member of appellant, a private club, was refused service at the club's dining room and bar solely because of his race. In suing for injunctive relief, appellee contended that the discrimination was state action, and thus a violation of the Equal Protection Clause of the Fourteenth Amendment, because the Pennsylvania liquor board had issued appellant a private club liquor license. The District Court found appellant's membership and guest practices discriminatory, agreed with appellee's view that state action was present, and declared the liquor license invalid as long as appellant continued its discriminatory practices. Appellant's motion to have the final decree limited to its guest policy was opposed by appellee, and the court denied the motion. Following the District Court's decision, the applicable bylaws were amended to exclude as guests those who would be excluded as members. *Held*:

1. Appellee, who had not applied for or been denied membership in appellant private club, had no standing to contest appellant's membership practices. He did, however, have standing to litigate the constitutional validity of appellant's discriminatory policies toward members' guests, and his opposition to amendment of the judgment did not constitute a disclaimer of injunctive relief directed at appellant's guest policies. Pp. 1-7.

2. The operation of Pennsylvania's regulatory scheme enforced by the state liquor board, except as noted below, does not sufficiently implicate the State in appellant's discriminatory guest practices so as to make those practices "state action" within the purview of the Equal Protection Clause, and there is no suggestion in the record that the State's regulation of the sale of liquor is intended overtly or covertly to encourage discrimination. *Burton v. Wil-*

## Syllabus

*mington Parking Authority*, 365 U. S. 715, factually distinguished. Pp. 7-14.

3. Pennsylvania liquor board's regulation requiring that "every club licensee shall adhere to all the provisions of its constitution and by-laws" in effect placed state sanctions behind the discriminatory guest practices that were enacted after the District Court's decision, and enforcement of that regulation should be enjoined to the extent that it requires appellant to adhere to those practices. Pp. 8-16.

318 F. Supp. 1246, reversed and remanded.

REHNQUIST, J., delivered the opinion of the Court, in which BURGER, C. J., and STEWART, WHITE, BLACKMUN, and POWELL, JJ., joined. DOUGLAS, J., filed a dissenting opinion, in which MARSHALL, J., joined. BRENNAN, Jr., filed a dissenting opinion, in which MARSHALL, J., joined.

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D.C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

## SUPREME COURT OF THE UNITED STATES

No. 70-75

Moose Lodge No. 107, } On Appeal from the United  
Appellant, } States District Court for the  
v. } Middle District of Pennsyl-  
K. Leroy Irvis et al. } vania.

[June 12, 1972]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

Appellee Irvis, a Negro, was refused service by appellant Moose Lodge, a local branch of the national fraternal organization located in Harrisburg, Pennsylvania. Appellee then brought this action under 42 U. S. C. § 1983 for injunctive relief in the United States District Court for the Middle District of Pennsylvania. He claimed that because the Pennsylvania liquor board had issued appellant Moose Lodge a private club license that authorized the sale of alcoholic beverages on its premises, the refusal of service to him was "state action" for the purposes of the Equal Protection Clause of the Fourteenth Amendment. He named both Moose Lodge and the Pennsylvania Liquor Authority as defendants, seeking injunctive relief that would have required the defendant liquor board to revoke Moose Lodge's license so long as it continued its discriminatory practices. Appellee sought no damages.

A three-judge district court, convened at appellee's request, upheld his contention on the merits, and entered a decree declaring invalid the liquor license issued to Moose Lodge "as long as it follows a policy of racial discrimination in its membership or operating policies

or practices," Moose Lodge alone appealed from the decree, and we postponed decision as to jurisdiction until the hearing on the merits, — U. S. —. Appellant urges in the alternative that we either vacate the judgment below because there is not presently a case or controversy between the parties, or that we reverse on the merits.

# I

The District Court in its opinion found that "a Caucasian member in good standing brought plaintiff, a Negro, to the Lodge's dining room and bar as his guest and requested service of food and beverages. The Lodge through its employees refused service to plaintiff solely because he is a Negro." It is undisputed that each local Moose Lodge is bound by the constitution and general by-laws of the Supreme Lodge, the latter of which contains a provision limiting membership in the lodges to white male Caucasians. The District Court in this connection found that "the lodges accordingly maintain a policy and practice of restricting membership to the Caucasian race and permitting members to bring only Caucasian guests on lodge premises, particularly to the dining room and bar."

The District Court ruled in favor of appellee on his Fourteenth Amendment claim, and entered the previously described decree. Following its loss on the merits in the District Court, Moose Lodge moved to modify the final decree by limiting its effect to discriminatory policies with respect to the service of guests. Appellee opposed the proposed modification, and the court denied the motion.

The District Court did not find, and it could not have found on this record, that appellee had sought membership in Moose Lodge and been denied it. Appellant



contends that because of this fact, appellee had no standing to litigate the constitutional issue respecting Moose Lodge's membership requirements, and that therefore the decree of the court below erred insofar as it decided that issue.

Any injury to appellee from the conduct of Moose Lodge stemmed not from the lodge's membership requirements, but from its policies with respect to the serving of guests of members. Appellee has standing to seek redress for injuries done to him, but may not seek redress for injuries done to others. *Virginian Railway v. Federation*, 300 U. S. 515, 558 (1937); *Erie Railroad Co. v. Williams*, 233 U. S. 685, 697. While this Court has held that in exceptional situations a concededly injured party may rely on the constitutional rights of a third party in obtaining relief, *Barrows v. Jackson*, 346 U. S. 249 (1953),<sup>1</sup> in this case appellee was not injured by Moose Lodge's membership policy since he never sought to become a member.

Appellee relies on *Flast v. Cohen*, 392 U. S. 83 (1968), and *Law Students Research Council v. Wadmond*, 401 U. S. 154 (1971), to support the breadth of the District Court's decree. *Flast v. Cohen* held that a federal taxpayer had standing *qua* taxpayer to challenge the expenditure of federal funds authorized by Congress under the taxing and spending clause of the Constitution. The Court in *Flast* pointed out:

"It will not be sufficient to allege an incidental expenditure of tax funds in the administration of an essentially regulatory statute. This require-

<sup>1</sup> Our recent opinion in *Sierra Club v. Morton*, — U. S. —, referred to a similar relationship between the standing of the plaintiff and the argument of which he might avail himself where judicial review of agency action is sought. — U. S. —, at —.

ment is consistent with the limitation imposed upon State-taxpayer standing in federal courts in *Doremus v. Board of Education*, 342 U. S. 429 (1952)." 392 U. S., at 102.

The taxpayer's claim in *Flast*, of course, was that the proposed expenditure violated the establishment clause of the First Amendment to the Constitution, a clause which by its terms prohibits taxing and spending in aid of religion.

The Court in *Law Students Research Cotuncil v. Wadmond*, *supra*, noted that while appellants admitted that no person involved in that litigation had been refused admission to the New York bar, they claimed that the existence of New York's system of screening applicants for admission to the bar worked a chilling effect upon the free exercise of the rights of speech and association of students who must anticipate having to meet its requirements. The Court then went on to decide the merits of the students' contention. While the doctrine of "overbreadth" has been held by this Court in prior decisions to accord standing by reason of the "chilling effect" that a particular law might have upon the exercise of the First Amendment rights, that doctrine has not been applied to constitutional litigation in areas other than those relating to the First Amendment.

We believe that Moose Lodge is correct, therefore, in contending that the District Court in its decree went beyond the vindication of any claim that appellee had standing to litigate. Appellee did, however, have standing to litigate the constitutional validity of Moose Lodge's policies relating to the service of guests of members. The language of the decree, insofar as it referred to Moose Lodge's "policy of racial discrimination against membership or operating policies or practices" is sufficiently broad to encompass practices relating to the

service of guests of members, as well as policies and practices relating to the acceptance of members. But Moose Lodge claims that, because of the position appellee took on the motion to modify the decree, he in effect disclaimed any interest in obtaining relief based solely on the Lodge's practice with respect to serving the guests of members.

Appellee in his brief on this point says:

"[Moose Lodge's argument as to mootness] is based upon Moose Lodge's motion to modify the decree . . . and somehow to allow it to change its operations and to permit Irvis to be brought to the Moose Lodge's premises as a guest. But, as Irvis pointed out in his answer to this motion . . . nothing at all would be changed even if this were done because the vice of racial discrimination arose from the privileges of membership, either those accruing to a person in his own enjoyment of them or those accruing to a person in his ability to bring a guest or guests to Moose Lodge. Nothing in the suggested modification would make repetition impossible because the fact that Irvis was a guest was purely happenstance. Whether he be barred because no member would invite him or because he has no opportunity to become a member, the situation remains unchanged." (Brief, at 41.)

During oral argument of the case here, counsel for appellee was asked to explain why he opposed the motion to modify made in the lower court, and he responded as follows:

" . . . the motion to modify which would have allowed Mr. Irvis or any others to be admitted as a guest would have done nothing to remove the Commonwealth of Pennsylvania from the discriminatory actions of the Moose Lodge.

"That is, it still would have been a matter of being dependent upon a white member of the Moose Lodge to invite him there. It would have been a matter of no particular Negro being sure, that the Moose Lodge would or would not discriminate. The Commonwealth of Pennsylvania would still be issuing that license to a discriminating private club. And I think it's worth noting that at the time this motion to modify was being presented, the Moose Lodge was in the process of amending its by-laws to forbid Negroes from being guests. So, at the same time they were saying let us modify the decree so that we can admit Mr. Irvis as a guest, their by-laws were being amended to say no Negroes can come in as guests, let alone members.

"We feel that the idea that he should then be allowed to come in as a guest through a modification of the decree does not go to the heart of the problem. It does not supply the type of redress that we think cuts through the problem of State participation or support for the discrimination of the Moose Lodge, and that is why we oppose it."

"We are loath to attach conclusive weight to the relatively spontaneous responses of counsel to equally spontaneous questioning from the Court during oral argument. However, upon examination of this answer it reflects substantially the same position as appellee took in his brief here. While it is possible to infer from these statements that appellee is simply not interested in obtaining any relief as to guest practices of Moose Lodge if he should prevail on the merits, it is equally possible to read them as being tactical arguments designed to avoid having to settle for half a loaf when he might obtain the whole loaf.

The mere refusal by appellee to consent to the proposed amendment of the judgment by itself could not

be construed as a waiver or disclaimer of injunctive relief directed solely to Moose Lodge's practice with respect to the service of guests. Appellee's complaint, while directed primarily at membership policies of Moose Lodge, contained a customary prayer for other relief which was broad enough to embrace relief with respect to the practices of the lodge in serving guests of members. The District Court in its decree used language that was clearly broad enough to include such practices, as well as the membership policies of Moose Lodge. Having thus prayed for such relief in his complaint, and having obtained it from the District Court, nothing less than an explicit renunciation of any claim or desire for such relief here would justify our concluding that there was no longer a case or controversy with respect to Moose Lodge's practices in serving guests of members. We do not believe that a fair reading of appellee's argument in opposition to the motion to amend the judgment below, or of the statements made in his brief and oral argument here, amount to such an explicit renunciation.

Because appellee had no standing to litigate a constitutional claim arising out of Moose Lodge's membership practices, the District Court erred in reaching that issue on the merits. But it did not err in reaching the constitutional claim of appellee that Moose Lodge's guest service practices under these circumstances violated the Fourteenth Amendment. Nothing in the positions taken by the parties since the entry of the District Court decree has mooted that claim, and we therefore turn to its disposition.

## II

Moose Lodge is a private club in the ordinary meaning of that term. It is a local chapter of a national fraternal organization having well defined requirements for membership. It conducts all of its activities in a



building that is owned by it. It is not publicly funded. Only members and guests are permitted in any lodge of the order; one may become a guest only by invitation of a member or upon invitation of the house committee.

Appellee, while conceding the right of private clubs to choose members upon a discriminatory basis, asserts that the licensing of Moose Lodge to serve liquor by the Pennsylvania Liquor Control Board amounts to such State involvement with the club's activities as to make its discriminatory practices forbidden by the Equal Protection Clause of the Fourteenth Amendment. The relief sought and obtained by appellee in the District Court was an injunction forbidding the licensing by the liquor authority of Moose Lodge until it ceased its discriminatory practices. We conclude that Moose Lodge's refusal to serve food and beverages to a guest by reason of the fact that he was a Negro does not, under the circumstances here presented, violate the Fourteenth Amendment.

In 1883, this Court in *The Civil Rights Cases*, 109 U. S. 3, set forth the essential dichotomy between discriminatory action by the State, which is prohibited by the Equal Protection Clause, and private conduct, "however discriminatory or wrongful," against which that clause "erects no shield," *Shelley v. Kraemer*, 334 U. S. 1, 13 (1948). That dichotomy has been subsequently reaffirmed in *Shelley v. Kraemer*, *supra*, and in *Burton v. Wilmington Parking Authority*, 365 U. S. 715 (1951).

While the principle is easily stated, the question of whether particular discriminatory conduct is private, on the one hand, or amounts to "State action," on the other hand, frequently admits of no easy answer. "Only by sifting facts and weighing circumstances can the non-obvious involvement of the State in private conduct

be attributed its true significance." *Burton v. Wilmington Parking Authority, supra*, at 772.

Our cases make clear that the impetus for the forbidden discrimination need not originate with the State if it is state action that enforces privately originated discrimination. *Shelley v. Kraemer, supra*. The Court held in *Burton v. Wilmington Parking Authority, supra*, that a private restaurant owner who refused service because of a customer's race violated the Fourteenth Amendment, where the restaurant was located in a building owned by a state created parking authority and leased from the authority. The Court, after a comprehensive review of the relationship between the lessee and the parking authority concluded that the latter had "so far insinuated itself into a position of interdependence with Eagle [the restaurant owner] that it must be recognized as a joint participant in the challenged activity, which, on that account, cannot be considered to have been so 'purely private' as to fall without the scope of the Fourteenth Amendment." 365 U. S., at 725.

The Court has never held, of course, that discrimination by an otherwise private entity would be violative of the Equal Protection Clause if the private entity receives any sort of benefit or service at all from the State, or if it is subject to state regulation in any degree whatever. Since state-furnished services include such necessities of life as electricity, water, and police and fire protection, such a holding would utterly emasculate the distinction between private as distinguished from State conduct set forth in *The Civil Rights Cases, supra*, and adhered to in subsequent decisions. Our holdings indicate that where the impetus for the discrimination is private, the State must have "significantly involved itself with invidious discriminations," *Reitman v. Mulkey*, 387 U. S. 369, 380 (1967), in order for the discriminatory action to fall within the ambit of the constitutional prohibition.

Our prior decisions dealing with discriminatory refusal of service in public eating places are significantly different factually from the case now before us. *Peterson v. City of Greenville*, 373 U.S. 244 (1963), dealt with trespass prosecution of persons who "sat in" at a restaurant to protest its refusal of service to Negroes. There the Court held that although the ostensible initiative for the trespass prosecution came from the proprietor, the existence of a local ordinance requiring segregation of races in such places was tantamount to the State having "commanded a particular result," 373 U.S., at 248. With one exception, which is discussed *infra*, at 13-15, there is no suggestion in this record that the Pennsylvania statutes and regulations governing the sale of liquor are intended either overtly or covertly to encourage discrimination.

In *Burton, supra*, the Court's full discussion of the facts in its opinion indicates the significant differences between that case and this:

"The land and building were publicly owned. As an entity, the building was dedicated to 'public uses' in performance of the Authority's 'essential governmental functions.' [Citation omitted.] The costs of land acquisition, construction, and maintenance are defrayed entirely from donations by the City of Wilmington, from loans and revenue bonds and from the proceeds of rentals and parking services out of which the loans and bonds were payable. Assuming that the distinction would be significant [citation omitted] the commercially leased areas were not surplus state property, but constituted a physically and financially integral and, indeed, indispensable part of the State's plan to operate its project as a self-sustaining unit. Upkeep and maintenance of the building, including necessary repairs, were

responsibilities of the Authority and were payable out of public funds. It cannot be doubted that the peculiar relationship of the restaurant to the parking facility in which it is located confers on each an incidental variety of mutual benefits. Guests of the restaurant are afforded a convenient place to park their automobiles, even if they cannot enter the restaurant directly from the parking area. Similarly, its convenience for diners may well provide additional demand for the Authority's parking facilities. Should any improvements effected in the leasehold by Eagle become part of the realty, there is no possibility of increased taxes being passed on to it since the fee is held by a tax-exempt government agency. Neither can it be ignored, especially in view of Eagle's affirmative allegation that for it to serve Negroes would injure its business, that profits earned by discrimination not only contribute to, but also are indispensable elements in, the financial success of a government agency." 365 U. S., at 723-724.

Here there is nothing approaching the symbiotic relationship between lessor and lessee that was present in *Burton*, where the private lessee obtained the benefit of locating in a building owned by the State created parking authority, and the parking authority was enabled to carry out its primary public purpose of furnishing parking space by advantageously leasing portions of the building constructed for that purpose to commercial lessees such as the owner of the Eagle Restaurant. Unlike *Burton*, the Moose Lodge building is located on land owned by it, not by any public authority. Far from apparently holding itself out as a place of public accommodation, Moose Lodge quite ostentatiously pro-



claims the fact that it is not open to the public at large.<sup>2</sup> Nor is it located and operated in such surroundings that although private in name, it discharges a function or performs a service that would otherwise in all likelihood be performed by the State. In short, while Eagle was a public restaurant in a public building, Moose Lodge is a private social club in a private building.

With the exception hereafter noted, the Pennsylvania Liquor Control Board plays absolutely no part in establishing or enforcing the membership or guest policies of the club, which it licenses to serve liquor.<sup>3</sup> There is no suggestion in this record that the Pennsylvania Act, either as written or as applied, discriminates against minority groups either in their right to apply for club licenses themselves or in their right to purchase and be served liquor in places of public accommodation. The only effect that the state licensing of Moose Lodge to serve liquor can be said to have on the right of any other Pennsylvanian to buy or be served liquor on premises other than those of Moose Lodge is that for some purposes club licenses are counted in the maximum number of licenses which may be issued in a given municipality. Basically each municipality has a quota of one retail license for each 1,500 inhabitants. Licenses issued to hotels, municipal golf courses and airport restaurants are not counted in this quota, nor are club licenses until

<sup>2</sup> The Pennsylvania courts have found that Local 107 is not a "place of public accommodation" within the terms of the Pennsylvania Human Relations Act, 43 Purdon's Pa. Stat. Ann. §§ 951 *et seq.* *Pennsylvania Human Relations Commission v. The Loyal Order of Moose, Lodge No. 107*, — Pa. D&C 2d —, *aff'd*, — Pa. Super. —.

<sup>3</sup> Unlike the situation in *Public Utilities Comm'n v. Pollak*, 343 U. S. 451 (1952), where the regulatory agency had affirmatively approved the practice of the regulated entity after full investigation, the Pennsylvania Liquor Control Board has neither approved nor endorsed the racially discriminatory practices of Moose Lodge.



the maximum number of retail licenses is reached. Beyond that point, neither additional retail licenses nor additional club licenses may be issued so long as the number of issued and outstanding retail licenses remains above the statutory maximum.

The District Court was at pains to point out in its opinion what it considered to be the "pervasive" nature of the regulation of private clubs by the Pennsylvania Liquor Control Board. As that court noted, an applicant for a club license must make such physical alterations in its premises as the board may require, must file a list of the names and addresses of its members and employees, and must keep extensive financial records. The board is granted the right to inspect the licensed premises at any time when patrons, guests or members are present.

However detailed this type of regulation may be in some particulars, it cannot be said to in any way foster or encourage racial discrimination. Nor can it be said to make the State in any realistic sense a partner or even a joint venturer in the club's enterprise. The limited effect of the prohibition against obtaining additional club licenses when the maximum number of retail licenses allotted to a municipality has been issued, when considered together with the availability of liquor from hotel, restaurant, and retail licensees falls far short of conferring upon club licensees a monopoly in the dispensing of liquor in any given municipality or in the State as a whole. We therefore hold that, with the exception hereafter noted, the operation of the regulatory scheme enforced by the Pennsylvania Liquor Control Board does not sufficiently implicate the State in the discriminatory guest policies of Moose Lodge so as to make the latter "State action" within the ambit of the

Equal Protection Clause of the Fourteenth Amendment.

The District Court found that the regulations of the Liquor Control Board adopted pursuant to statute affirmatively require that "every club licensee shall adhere to all the provisions of its constitution and by-laws."<sup>4</sup> Appellant argues that the purpose of this provision "is purely and simply and plainly the prevention of subterfuge," pointing out that the *bona fides* of a private club, as opposed to a place of public accommodation masquerading as a private club, is a matter with which the State Liquor Control Board may legitimately concern itself. Appellee concedes this to be the case, and expresses disagreement with the District Court on this point. There can be no doubt that the label "private club" can and has been used to evade both regulations of State and local liquor authorities, and statutes requiring places of public accommodation to serve all persons without regard to race, color, religion, or national origin. This Court in *Daniel v. Paul*, 395 U. S. 298 (1969), had occasion to address this issue in connection with the application of Title II of the Civil Rights Act of 1964, 78 Stat. 243, 42 U. S. C. § 2000a *et seq.*

The effect of this particular regulation on Moose Lodge under the provisions of the constitution placed in the record in the court below would be to place State sanctions behind its discriminatory membership rules, but not behind its guest practices, which were not embodied in the constitution of the lodge. Had there been no change in the relevant circumstances since the making of the record in the District Court, our holding in Part I of this opinion that appellee has standing to challenge only the guest practices of Moose Lodge would have a bearing on our disposition of this issue. Appellee stated upon oral argument, though, and Moose Lodge conceded in its

<sup>4</sup> Regulations of the Pennsylvania Liquor Control Board § 113.09 (June 1970 ed.).

Brief<sup>5</sup> that the bylaws of the Supreme Lodge have been altered since the lower court decision to make applicable to guests the same sort of racial restrictions as are presently applicable to members.<sup>6</sup>

Even though the Liquor Control Board regulation in question is neutral in its terms, the result of its application in a case where the constitution and by-laws of a club required racial discrimination would be to invoke the sanctions of the State to enforce a concededly discriminatory private rule. State action, for purposes of the Equal Protection Clause, may emanate from rulings of administrative and regulatory agencies as well as from legislative or judicial action. *Robinson v. Florida*, 378 U. S. 153, 156 (1964). *Shelley v. Kraemer*, *supra*, makes it clear that the application of state sanctions to enforce such a rule would violate the Fourteenth Amendment. Although the record before us is not as clear as one would like, appellant has not persuaded us that the District Court should have denied any and all relief.

Appellee was entitled to a decree enjoining the enforcement of § 113.09 of the regulations promulgated by the Pennsylvania Liquor Control Board insofar as that regulation requires compliance by Moose Lodge with pro-

<sup>5</sup> At p. 10.

<sup>6</sup> Section 92.1 of the General Laws of the Loyal Order of Moose presently provides in relevant part as follows:

"Sec. 92.1—*To Prevent Admission of Non Members*—There shall never at any time be admitted to any social club or home maintained or operated by any lodge, any person who is not a member of some lodge in good standing. The House Committee may grant guest privileges to persons who are eligible for membership in the fraternity consistent with governmental laws and regulations. A member shall accompany such guest and shall be responsible for the actions of said guest, and upon the member leaving, the guest must also leave. It is the duty of each member of the Order when so requested to submit for inspection his receipt for dues to any member of any House Committee or its authorized employee."

visions of its constitution and by-laws containing racially discriminatory provisions. He was entitled to no more. The judgment of the District Court is reversed, and the cause remanded with instructions to enter a decree in conformity with this opinion.

*Reversed and remanded.*



# SUPREME COURT OF THE UNITED STATES

No. 70-75

Moose Lodge No. 107, } On Appeal from the United  
Appellant, } States District Court for the  
v. } Middle District of Pennsyl-  
K. Leroy Irvis et al. } vania.

[June 12, 1972]

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE MARSHALL joins, dissenting.

My view of the First Amendment and the related guarantees of the Bill of Rights is that they create a zone of privacy which precludes government from interfering with private clubs or groups.<sup>1</sup> The associational rights which our system honors permits all white, all black, all brown, and all yellow clubs to be formed. They also permit all Catholic, all Jewish, or all agnostic clubs to be established. Government may not tell a man or woman who his or her associates must be. The individual can be as selective as he desires. So the fact that the Moose Lodge allows only Caucasians to join or come as guests is constitutionally irrelevant, as is the decision of the Black Muslims to admit to their services only members of their race.

<sup>1</sup> It has been stipulated that Moose Lodge No. 107 "is, in all respects, private in nature and does not appear to have any public characteristics." App. 23. The cause below was tried solely on the theory that granting a Pennsylvania liquor license to a club assumed to be purely private was sufficient State involvement to trigger the Equal Protection Clause. There was no occasion to consider the question whether, perhaps because of a role as a center of community activity, Moose Lodge No. 107 was in fact "private" for equal protection purposes. The decision today, therefore, leaves this question open. See Comment, Current Developments in State Action and Equal Protection of the Law, 4 Gonzaga L. Rev. 233, 271-286.



The problem is different, however, where the public domain is concerned. I have indicated in *Garner v. Louisiana*, 368 U. S. 157, and *Lombard v. Louisiana*, 373 U. S. 267, that where restaurants or other facilities serving the public are concerned and licenses are obtained from the State for operating the business, the "public" may not be defined by the proprietor to include only people of his choice; nor may a State or municipal service be granted only to some. *Evans v. Newton*, 382 U. S. 296, 298-299.

Those cases are not precisely apposite, however, for a private club, by definition, is not in the public domain. And the fact that a private club gets some kind of permit from the State or municipality does not make it *ipso facto* a public enterprise or undertaking, any more than the grant to a householder of a permit to operate an incinerator puts the householder in the public domain. We must therefore examine whether there are special circumstances involved in the Pennsylvania scheme which differentiate the liquor license possessed by Moose Lodge from the incinerator permit.

Pennsylvania has a state store system of alcohol distribution. Resale is permitted by hotels, restaurants, and private clubs which all must obtain licenses from the Liquor Control Board. The scheme of regulation is complete and pervasive; and the state courts have sustained many restrictions on the licensees. See *Tahiti Bar Inc. Liquor License Case*, 395 Pa. 355. Once a license is issued the licensee must comply with many detailed requirements or risk suspension or revocation of the license. Among these requirements is Regulation No. 113.09 which says "Every club licensee shall adhere to all the provisions of its Constitution and By-laws." This regulation means, as applied to Moose Lodge, that it must adhere to the racially discriminatory provision of the Constitution of its Supreme Lodge that "The member-

ship of the lodge shall be composed of male persons of the Caucasian or White race above the age of twenty-one years, and not married to someone other than the Caucasian or White race, who are of good moral character, physically and mentally normal, who shall profess a belief in a Supreme Being."

It is argued that this regulation only aims at the prevention of subterfuge and at enforcing Pennsylvania's differentiation between places of public accommodation and bona fide private clubs. It is also argued that the regulation only gives effect to the constitutionally protected rights of privacy and of association. But I cannot so read the regulation. While those other purposes are embraced in it, so is the restrictive membership clause. And we have held that "a State is responsible for the discriminatory act of a private party when the State, by its law, has compelled the act." *Adickas v. Kress & Co.*, 398 U. S. 144, 170. See *Peterson v. City of Greenville*, 373 U. S. 244, 248. It is irrelevant whether the law is statutory, or an administrative regulation. *Robinson v. Florida*, 378 U. S. 153, 156. And it is irrelevant whether the discriminatory act was instigated by the regulation, or was independent of it. *Peterson v. City of Greenville*, *supra*. The result, as I see it, is the same as though Pennsylvania had put into its liquor licenses a provision that the license may not be used to dispense liquor to Blacks, Browns, Yellows—or atheists or agnostics. Regulation No. 113.09 is thus an invidious form of state action.

Were this regulation the only infirmity in Pennsylvania's licensing scheme, I would perhaps agree with the majority that the appropriate relief would be a decree enjoining its enforcement. But there is another flaw in the scheme not so easily cured. Liquor licenses in Pennsylvania, unlike driver's licenses, or marriage licenses, are not freely available to those who meet racially neu-

tral qualifications. There is a complex quota system, which the majority accurately describes. *Ante*, at —. What the majority neglects to say is that the Harrisburg quota, where Moose Lodge No. 107 is located, has been full for many years.<sup>2</sup> No more club licenses may be issued in that city.

This state-enforced scarcity of licenses restricts the ability of blacks to obtain liquor, for liquor is commercially available *only* at private clubs for a significant portion of each week.<sup>3</sup> Access by blacks to places that serve liquor is further limited by the fact that the state quota is filled. A group desiring to form a nondiscriminatory club which would serve blacks must purchase a license held by an existing club, which can exact a monopoly price for the transfer. The availability of such a license is speculative at best, however, for, as Moose Lodge itself concedes, without a liquor license a fraternal organization would be hard-pressed to survive.

Thus, the State of Pennsylvania is putting the weight of its liquor license, concededly a valued and important adjunct to a private club, behind racial discrimination.

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<sup>2</sup> Indeed, the quota is more than full, as a result of a grandfather clause in the law limiting licenses to one per 1,500 inhabitants. Act 702 of December 17, 1959, § 2. There are presently 115 licenses in effect in Harrisburg, and based on 1970 census figures, the quota would be 45.

<sup>3</sup> Hotels and restaurants may serve liquor between 7:00 a. m. and 2:00 a. m. the next day, Monday through Saturday. On Sunday, such licensees are restricted to sales between 12:00 a. m. and 2:00 a. m., and between 1:00 p. m. and 10:00 p. m. Pennsylvania Liquor Code, § 406 (a). Thus, such licensees may serve a total of 123 hours per week. Club licensees, however, are permitted to sell liquor to members and guests from 7:00 a. m. to 3:00 a. m. the next day, seven-days-a-week. *Ibid.* The total hours of sale permitted club licensees is 140, 17 more than is permitted hotels and restaurants. (There is an additional restriction on election day sales as to which only club licensees are exempt. *Ibid.*)

As the first Justice Harlan, dissenting in the *Civil Rights Cases*, 102 U. S. 1, 59, said:

“I agree that government has nothing to do with social, as distinguished from technically legal, rights of individuals. No government ever has brought, or ever can bring, its people into social intercourse against their wishes. Whether one person will permit and maintain social relations with another is a matter with which government has no concern . . . . What I affirm is that no State, nor the officers of any State, nor any corporation or individual wielding power under State authority for the public benefit or the public convenience can, consistently . . . with the freedom established by the fundamental law . . . discriminate against freemen or citizens, in those rights, because of their race . . . .”

The regulation governing this liquor license has in it that precise infirmity.<sup>4</sup>

I would affirm the judgment below.

<sup>4</sup> The majority asserts that appellee Irvis had “standing” only to challenge Moose Lodge’s guest service practices, not its membership policies, on the theory that his “injury . . . stemmed not from the lodge’s membership requirements, but from its policies with respect to the serving of guests of members.” Maj. op., at 3. I submit that appellee’s standing is not so confined.

A litigant has standing, for purposes of the Art. III “case” or “controversy” requirement, if he “alleges that the challenged action has caused him injury in fact, economic or otherwise.” *Association of Data Processing Service Organizations v. Camp*, 397 U. S. 150, 152. When Moose Lodge refused service to appellee Irvis solely because of his race, it imposed upon him a special disability apart from that suffered by the population at large. If this discrimination is chargeable to the State, Irvis has standing, not only to challenge Moose Lodge’s guest policies—the immediate cause of the harm—but also to challenge the state scheme which authorized these policies. For an individual “subjected by statute to special disabilities necessarily has . . . a substantial, immediate, and real



interest in the validity of the statute which imposes the disability." *Evers v. Dwyer*, 358 U. S. 202, 204.

Moreover, once called into question, all discrimination authorized by the scheme is at issue. Just as a federal court may order an entire school desegregated upon the petition of a litigant representing only the fifth grade, so could the court below cure the invidious discrimination it found to exist in Pennsylvania's liquor licensing scheme upon the petition of a litigant injured only by one aspect of that discrimination. The root evil was that Irvis was discriminated against with the blessing of the State, not that he was discriminated against *qua* "guest" or "member."

In my view, moreover, a black Pennsylvanian suffers cognizable injury when the State supports and encourages the maintenance of a system of segregated fraternal organizations, whether or not he had himself sought membership in or has been refused service by such an organization, just as a black Pennsylvanian would suffer cognizable injury if the State were to enforce a segregated bus system, whether or not he had ever ridden or ever intended to ride on such a bus. Cf. *Evers v. Dwyer*, *supra*. American culture and history has been so plagued with racism and discrimination that it is clear beyond doubt that in such circumstances blacks suffer "injury in fact." It "is practically a brand upon them, affixed by the law; an assertion of their inferiority, and a stimulant to . . . race prejudice . . ." *Strauder v. West Virginia*, 100 U. S. 303, 308. Their stake is analogous to the "spiritual stake" in First Amendment values which we have held may given standing to raise claims under the Establishment Clause and Free Exercise Clause. See *Flast v. Cohen*, 392 U. S. 83.

Thus, whether state action be found in Regulation 113.09, in Pennsylvania's creation of a monopoly which operates to restrict access to places in which blacks may be served liquor, or both, appellee Irvis has standing to challenge all aspects of the discriminatory scheme.



# SUPREME COURT OF THE UNITED STATES

No. 70-75

Moose Lodge No. 107, } On Appeal from the United  
Appellant, } States District Court for the  
v. } Middle District of Pennsyl-  
K. Leroy Irvis et al. } vania.

[June 12, 1972]

MR. JUSTICE BRENNAN, with whom MR. JUSTICE MARSHALL joins, dissenting.

When Moose Lodge obtained its liquor license, the State of Pennsylvania became an active participant in the operation of the Lodge bar. Liquor licensing laws are only incidentally revenue measures; they are primarily pervasive regulatory schemes under which the State dictates and continually supervises virtually every detail of the operation of the licensee's business. Very few, if any, other licensed businesses experience such complete state involvement. Yet the Court holds that that involvement does not constitute "state action" making the Lodge's refusal to serve a guest liquor solely because of his race a violation of the Fourteenth Amendment. The vital flaw in the Court's reasoning is its complete disregard of the fundamental value underlying the "state action" concept. That value is discussed in my separate opinion in *Adickes v. Kress & Co.*, 398 U. S. 144, 190-191 (1970):

"The state-action doctrine reflects the profound judgment that denials of equal treatment, and particularly denials on account of race or color, are singularly grave when government has or shares responsibility for them. Government is the social organ to which all in our society look for the promotion of liberty, justice, fair and equal treatment, and the setting of worthy norms and goals for

social conduct. Therefore something is uniquely amiss in a society where the government, the authoritative oracle of community values, involves itself in racial discrimination. Accordingly, . . . the cases that have come before us [in which] this Court has condemned significant state involvement in racial discrimination, however subtle and indirect it may have been and whatever form it may have taken[,] . . . represent vigilant fidelity to the constitutional principle that no State shall in any significant way lend its authority to the sordid business of racial discrimination."

Plainly, the State of Pennsylvania's liquor regulations intertwine the State with the operation of the Lodge bar in a "significant way [and] lend [the State's] authority to the sordid business of racial discrimination." The opinion of the late Circuit Judge Freedman, for the three-judge District Court, most persuasively demonstrates the "state action" present in this case:

"We believe the decisive factor is the uniqueness and the all-pervasiveness of the regulation by the Commonwealth of Pennsylvania of the dispensing of liquor under licenses granted by the state. The regulation inherent in the grant of a state liquor license is so different in nature and extent from the ordinary licenses issued by the state that it is different in quality.

"It had always been held in Pennsylvania, even prior to the Eighteenth Amendment, that the exercise of the power to grant licenses for the sale of intoxicating liquor was an exercise of the highest governmental power, one in which the state had the fullest freedom inhering in the police power of the sovereign. With the Eighteenth Amendment which went into effect in 1919 the right to

deal in intoxicating liquor was extinguished. The era of Prohibition ended with the adoption in 1933 of the Twenty-first Amendment, which has left to each state the absolute power to prohibit the sale, possession or use of intoxicating liquor, and in general to deal otherwise with it as it sees fit.

"Pennsylvania has exercised this power with the fullest measure of state authority. Under the Pennsylvania plan the state monopolizes the sale of liquor through its so-called state stores, operated by the state. Resale of liquor is permitted by hotels, restaurants and private clubs, which must obtain licenses from the Liquor Control Board, authorizing them 'to purchase liquor from a Pennsylvania Liquor Store [at a discount] and keep on the premises such liquor and, subject to the provisions of this Act and the regulations made thereunder to sell the same and also malt or brewed beverages to guests, patrons or members for consumption on the hotel, restaurant or club premises.'

"The issuance or refusal of a license to a club is in the discretion of the Liquor Control Board. In order to secure one of the limited number of licenses which are available in each municipality an applicant must comply with extensive requirements, which in general are applicable to commercial and club licenses equally. The applicant must make such physical alterations in his premises as the Board may require and, if a club, must file a list of the names and addresses of its members and employees, together with such other information as the Board may require. He must conform his overall financial arrangements to the statute's exacting requirements and keep extensive records. He may not permit 'persons of ill repute' to frequent his premises nor allow thereon at any time any 'lewd, im-

moral or improper entertainment.' He must grant the Board and its agents the right to inspect the licensed premises at any time when patrons, guests or members are present. It is only on compliance with these and numerous other requirements and if the Board is satisfied that the applicant is 'a person of good repute' and that the license will not be 'detrimental to the welfare, health, peace and morals of the inhabitants of the neighborhood,' that the license may issue.

"Once a license has been issued the licensee must comply with many detailed requirements or risk its suspension or revocation. He must in any event have it renewed periodically. Liquor licenses have been employed in Pennsylvania to regulate a wide variety of moral conduct, such as the presence and activities of homosexuals, performance by a topless dancer, lewd dancing, swearing, being noisy or disorderly. So broad is the state's power that the courts of Pennsylvania have upheld its restriction of freedom of expression of a licensee on the ground that in doing so it merely exercises its plenary power to attach conditions to the privilege of dispensing liquor which a licensee holds at the sufferance of the state.

"These are but some of the many reported illustrations of the use which the state has made of its unrestricted power to regulate and even to deny the right to sell, transport or possess intoxicating liquor. It would be difficult to find a more pervasive interaction of state authority with personal conduct. The holder of a liquor license from the Commonwealth of Pennsylvania therefore is not like other licensees who conduct their enterprises at arms-length from the state, even though they may have been required to comply with certain

conditions, such as zoning or building requirements, in order to obtain or continue to enjoy the license which authorizes them to engage in their business. The state's concern in such cases is minimal and once the conditions it has exacted are met the customary operations of the enterprise are free from further encroachment. Here by contrast beyond the act of licensing is the continuing and pervasive regulation of the licensees by the state to an unparalleled extent. The unique power which the state enjoys in this area, which has put it in the business of operating state liquor stores and in the role of licensing clubs, has been exercised in a manner which reaches intimately and deeply into the operation of the licensees.

"In addition to this, the regulations of the Liquor Control Board adopted pursuant to the statute affirmatively require that 'every club licensee shall adhere to all the provisions of its constitution and by-laws.' As applied to the present case this regulation requires the local Lodge to adhere to the constitution of the Supreme Lodge and thus to exclude non-Caucasians from membership in its licensed club. The state therefore has been far from neutral. It has declared that the local Lodge must adhere to the discriminatory provision under penalty of loss of its license. It would be difficult in any event to consider the state neutral in an area which is so permeated with state regulation and control, but any vestige of neutrality disappears when the state's regulation specifically exacts compliance by the licensee with an approved provision for discrimination, especially where the exaction holds the threat of loss of the license.

"However it may deal with its licensees in exercising its great and untrammelled power over liquor



traffic, the state may not discriminate against others or disregard the operation of the Equal Protection Clause of the Fourteenth Amendment as it affects personal rights. Here the state has used its great power to license the liquor traffic in a manner which has no relation to the traffic in liquor itself but instead permits it to be exploited in the pursuit of a discriminatory practice." 318 F. Supp. 1246, 1248-1250 (MD Pa. 1970).

This is thus a case requiring application of the principle that until today has governed our determinations of the existence of "state action": "Our prior decisions leave no doubt that the mere existence of efforts by the State, through legislation or otherwise, to authorize, encourage, or otherwise support racial discrimination in a particular facet of life constitutes illegal state involvement in those pertinent private acts of discrimination that subsequently occur." *Adickes v. Kress & Co.*, *supra*, 398 U. S., at 202 (separate opinion of BRENNAN, J.). See, e. g., *Peterson v. City of Greenville*, 373 U. S. 244 (1963); *Burton v. Wilmington Parking Authority*, 365 U. S. 715 (1961); *Evans v. Newton*, 382 U. S. 296 (1966); *Hunter v. Erickson*, 393 U. S. 385 (1969); *Lombard v. Louisiana*, 373 U. S. 267 (1963); *Reitman v. Mulkey*, 387 U. S. 369 (1967); *Robinson v. Florida*, 378 U. S. 153 (1964); *McCabe v. Atchinson, Topeka and Santa Fe R. Co.*, 235 U. S. 151 (1914).

I therefore dissent and would affirm the final decree entered by the District Court.

